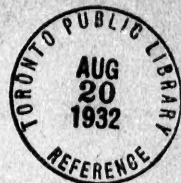


To

THE CHARTER
OF THE
TORONTO STREET RAILWAY CO.



TOGETHER WITH CERTAIN
STATUTES, BY-LAWS, RESOLUTIONS
AND AGREEMENTS

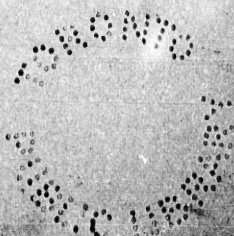
RELATING TO THE SAID COMPANY,
AND THE
Corporation of the City of Toronto,

FROM MARCH 14TH, 1861, TO APRIL 26TH, 1899,

Prepared in accordance with the order of the Council.

BY THE
City Solicitor.

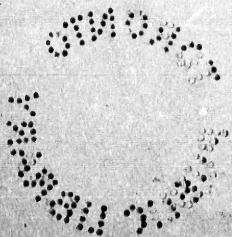
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PREFATORY NOTE.

By Report No. 24 of the Executive Committee, 1887, it was recommended "that the City Solicitor be directed to publish in pamphlet form the Charter of the Toronto Street Railway Company and the several agreements of the said Company with the City of Toronto, together with all the Statutes, City By-laws, Resolutions of Council and judicial decisions in any way relating to or affecting the said Company and the City, the cost of the same not to exceed the sum of \$150."

The above report was adopted in Council on August 29th, 1887, with an amendment adding thereto the words "and that His Worship the Mayor, Ald. Defoe, Ald. Roaf, Ald Carlyle (St. Thomas' Ward), and Ald. E. A. Macdonald be appointed to direct the Solicitor and supervise the publication of the same."

In accordance with the above report, the following documents (colated by my predecessor) are now submitted for the information of the Council.

CITY SOLICITOR'S OFFICE,
January, 1889.

C. R. W. BIGGAR,
City Solicitor.

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THE CHARTER

—OF THE—

Toronto Street Railway Company,

AND RELATIVE DOCUMENTS,

PREPARED IN ACCORDANCE WITH THE ORDER OF THE COUNCIL OF
THE CORPORATION OF THE CITY OF TORONTO.

Passed August 29th, 1887.

I.

The original agreement respecting the construction of the Toronto Street Railway is fully set out in By-law No. 858 of the City of Toronto, which was passed on the 22nd of July, 1861, and is as follows :

WHEREAS, by certain articles of agreement, bearing date the 26th day of March, A.D. 1861, the Corporation of the City of Toronto agreed with one Alexander Easton, as follows :—

ARTICLES OF AGREEMENT had, made and concluded this 26th day of March, in the year of Our Lord one thousand eight hundred and sixty-one.

BETWEEN

THE CORPORATION OF THE CITY OF TORONTO, of the first part,

AND

ALEXANDER EASTON, of the Village of Yorkville, of the second part.

WHEREAS, divers inhabitants of the City of Toronto have petitioned the Common Council of the City of Toronto to sanction the construction of street railways, in along and upon the streets of the said city, and the said party of the second part hath proposed to construct and operate such street railways upon the streets hereinafter mentioned, and the same Common Council did on the 14th day of the present month of March, accept such proposals by the following resolutions :

First.—That Alexander Easton be authorized to lay down street railways of approved construction on any of the streets of this City, such railways being of approved construction and worked under such regulations as may be necessary for the protection of the citizens.

Second.—All works necessary for constructing and laying down the several railway tracks shall be made in a substantial manner, according to the best modern practice, under the supervision of the City Surveyor or such other officer as the Council shall appoint for this purpose and to the satisfaction of the Council.

Third.—The roadway between and within at least one foot six inches from and outside of each rail shall be paved or macadamized and kept constantly in good repair by the said Easton, who shall also be bound to construct and keep in good repair crossings of a similar character to those adopted by the Corporation within the limits aforesaid, at the intersection of every such railway track and cross streets.

Fourth.—The tracks shall conform to the grades of the various streets through which they will run, as furnished by the City Surveyor or such officer as aforesaid, and shall not in any way change or alter the same.

Fifth.—The location of the line of railway in any of the streets shall not be made, until the plans thereof shewing the position of the rails and other works in each street shall have been submitted to and approved of, by the City Surveyor or such other officer as aforesaid.

Sixth.—The City authorities shall have the right to take up the streets traversed by the rails either for the purpose of altering the grades thereof, constructing or repairing drains, or for laying down or repairing water or gas pipes and for all other purposes within the province and privileges of the Corporation without being liable for any compensation or damage that may be occasioned to the working of the railway, or the works connected therewith.

Seventh.—The rail to be employed for the said railway shall be the flat rail, such as is now used in the City of Philadelphia with such modifications as the Council on the recommendation of the City Surveyor or other officer as aforesaid may decide to adopt and the cars shall be constructed in the most modern style.

Eighth.—The railway shall not be opened to the public nor put in operation until the sanction of the Council has been previously obtained by means of a special resolution to that effect, and such sanction shall only be granted upon a certificate from the City Surveyor or other officer especially appointed for that purpose declaring the said road to be in good condition and constructed conformably to the conditions prescribed by the agreement on that behalf.

Ninth.—Each car employed on the railway shall be numbered and none shall be used unless under a license for that purpose, for which license the said proprietor shall pay the annual sum of Five Dollars.

Tenth.—The cars shall be run over the whole of the tracks herein mentioned at least sixteen hours in summer and fourteen hours in winter of each day and at intervals of not greater than thirty minutes, and no car shall run on Sundays.

Eleventh.—The speed of the cars shall not exceed six miles per hour.

Twelfth.—The conductors shall announce to the passengers the names of the streets and public squares as the cars reach them.

Thirteenth.—The cars shall be used exclusively for the conveyance of passengers.

Fourteenth.—When the accumulation of snow or ice on the railway shall be such as to impede the traffic, every means shall be used to clear the track and, while impeded, sufficient sleighs shall be provided for the accommodation of the public.

Fifteenth.—No higher fare than five cents shall be charged for the conveyance of each passenger on the line.

Sixteenth.—The proprietor or proprietors shall be liable for all damages arising out of the construction or operation of the railways.

Seventeenth.—Should the proprietor neglect to keep the track or the railway or crossings between and on each side of the rails in good condition, or to have the necessary repairs made thereon, the City Surveyor or other proper officer shall give notice thereof requiring such repairs to be made forthwith, and if not made within a reasonable time, the said surveyor or other officer as aforesaid shall cause the repairs to be made and the amount so expended may be recovered against the said proprietors in any Court of competent jurisdiction.

Eighteenth.—The privilege granted by the present agreement shall extend over a period of thirty years from this date, but at the expiration thereof the Corporation may after giving six months' notice prior to the expiration of the said term of their intention, assume the ownership of the railways and all real and personal property in connection with the working thereof, on payment of their value, to be determined by arbitration, and in case the Corporation should fail in exercising the right of assuming the ownership of the said railway at the expiration of thirty years as aforesaid, the Corporation may at the expiration of every five years, to elapse after the first thirty years, exercise the same right of assuming the ownership of the said railway, and of all real and personal estates thereto appertaining after one year's notice to be given within the twelve months immediately preceding the expiration of every fifth year as aforesaid, and on payment of their value to be determined by arbitration.

Nineteenth.—Should the proprietors at any time give up the railway or cease to exercise the privilege hereby granted to them for a period of six months they shall forfeit the entire property, including the rails, cars, etc., to the benefit of the Corporation.

Twentieth.—The agreement to be made hereunder shall only have effect after the legislation necessary for legalizing the same shall have been obtained.

Twenty-first.—The rails shall be laid down on Queen street from Yonge street to the Asylum, on King street from the River Don to Bathurst street, and on Yonge street from King street to Bloor street.

Twenty-second.—The track on Yonge street shall be completed and equipped within twelve months from the date of the Act authorizing the same, and the tracks on King and Queen streets shall be constructed and fully equipped within two years from the same time.

Twenty-third.—If within four months after the passing of the Act the proprietor should fail to proceed with the works in such manner as to satisfy the City Surveyor or other proper officer appointed by the Corporation that they will be completed within the stipulated time, the Corporation may give fourteen days notice of its intention to annul the privileges hereby granted, and if the works are not then proceeded with in a satisfactory manner, the Corporation may by resolution annul the said privileges accordingly.

Twenty-fourth.—In the event of any other party proposing to construct railways on any of the streets not occupied by the party to whom the privilege is now to be granted, the nature of the proposals thus made shall be communicated to him and the option of constructing such proposed railway on similar conditions as are herein stipulated shall be offered, but if such preference is not accepted within one month, then the Corporation may grant the privilege to any other parties.

NOW THESE PRESENTS WITNESS, that the said parties of the first part in consideration of the amounts to be paid to them by the said party of the second part, his executors, administrators and assigns, by and under the said resolutions and these presents, and of the covenants and agreements therein, and on his part and

behalf to be kept and performed, do hereby give and grant unto the said parties of the second part, his executors, administrators and assigns, the exclusive right and privilege to construct, maintain, and operate Street Railways by single or double tracks with all necessary turn-outs, side tracks and switches, in, along, and upon King street, Queen street and Yonge street, in the said City, together with the right to the use of the tracks of the said railways as against all other vehicles whatsoever, for the said term of thirty years upon the conditions and subject to all the payments, regulations, provisions, and stipulations in the said above recited resolutions, and these presents expressed and contained, and the said parties of the first part, covenant with the said party of the second part, his executors, administrators and assigns.

First.—That when and so often as it may be necessary for them the said parties of the first part, to open any of the said streets as stipulated in the sixth resolution above recited, a reasonable notice shall be given to the said party of the second part of their intention so to do, and the work thereon shall not be unnecessarily delayed, but shall be carried on and completed with all reasonable speed due regard being had to the proper and efficient execution thereof.

Second.—That there shall be no unnecessary delay on the part of the said parties of the first part and their officer or officers in the granting of any certificate required by any of the said resolutions; but the said parties of the first part and their officer and officers, shall and will in all things so far as is consistent with their duty, aid and assist the said party of the second part in carrying out this agreement.

Third.—That the time limited in the twenty third resolution shall apply to the construction of the railway on Yonge street, and that the restrictions therein contained, so far as the same apply to the railway on King and Queen streets, shall be extended to the first of June, in the year of our Lord 1868.

Fourth.—The said party of the second part, his executors, administrators and assigns paying license fees as provided in the ninth resolution and performing and fulfilling all the conditions, stipulations, restrictions and covenants in the said resolutions and in these presents contained, shall and may, peaceably and quietly have, hold and enjoy the rights and privileges hereby granted, without any let or hindrance or trouble of or by the said parties of the first part, or any person or persons on their behalf.

And, lastly, that as soon as the necessary power required to sanction this agreement be granted by the Legislature of the Province, and the parties of the first part are legally authorized so to do, they will without delay pass a By-law framed in accordance with the said resolutions.

And the said party of the second part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said parties of the first part, their successors and assigns in manner following, that is to say:—
First.—That he will construct, maintain and operate the said railways within the times in the manner and upon the conditions in the said resolutions and these presents set forth.

Second.—That he will well and truly pay the said license fees, and will truly and faithfully perform, fulfil and keep all the conditions, covenants and agreements in the said resolutions and these presents expressed and contained on his and their part to be performed, fulfilled and kept.

Third.—That before breaking up, opening, or interfering with any of the said streets, for the purpose of constructing the said railways he will give or cause to be given to the City Surveyor or other proper officer of the said parties of the first part at least ten days notice of his intention so to do, and that no more than twenty-six hundred feet of the said streets shall be broken up or opened at any one time, and that when the work thereon shall have been commenced the same shall be proceeded with steadily and without intermission and as rapidly as the same can be carried on, due regard being had to the proper and efficient construction of the same.

Fourth.—That during the construction of the said railways due and proper care shall be taken to leave sufficient space and crossings so that the traffic and travel on the said streets and other streets running at right angles thereto shall not be unnecessarily impeded, and that the water courses of the said streets shall be left free and unobstructed, and lights, barriers or watchmen provided and kept by the said party of the second part when and where required to prevent accidents to the public.

Fifth.—That the gauge of the said railways shall be such that the ordinary vehicles now in use may travel on the said tracks, and that it shall and may be lawful to and for all and every person and persons whatsoever to travel upon and use the said tracks with their vehicles loaded or empty, when and so often as they may please, provided they do not impede or interfere with the cars of the party of the second part, running thereon, and subject at all times to the right of the said party of the second part, his executors, and administrators and assigns to keep the said tracks with his and their cars, when meeting or overtaking any other vehicle thereon.

Sixth.—That the said party of the second part, his heirs, executors or administrators shall and will at all times employ careful, sober and civil agents, conductors and drivers to take charge of the cars upon the said railways and that he and the said agents, conductors, drivers and servants, shall and will from time to time, and at all times during the continuance of this grant and the exercise by him and them of the rights and privileges hereby conferred, operate the said railway and cause the same to be worked under such regulations as the Common Council of the City of Toronto may deem necessary and requisite for the protection of the persons and property of the public, and provided such regulations shall not infringe upon the privilege granted by the said resolutions.

Seventh.—That no higher fare than five cents shall be charged or exacted from or upon any passenger using the car or cars of the said party of the second part from the St. Lawrence Hall on King street either to Yorkville or the Asylum, but he or she may be entitled to travel in the said car or cars either of the said distances for one fare only.

And, lastly, that all the works to be done under the said resolutions and these presents, and the rights and privileges to be used thereunder shall be done and used to the satisfaction of the Common Council of the City of Toronto or the City Surveyor or other officer to be by them appointed for the purpose. Provided, however, that if the said party of the second part be delayed by the order and injunction of any court, except the same be granted on the default or negligence of the said party of the second part, then the time of such delay shall be excluded from the operation of this agreement, and such time in addition to the periods prescribed in the said resolutions shall be allowed for the completion of the said railway, and also that it is the intended meaning of the nineteenth resolution above recited and the forfeiture therein mentioned shall attach in case the said party of the second part fails to build and operate any one of the three lines of railway; it being the clear understanding of the said party of the second part that the privileges hereby conferred were to insure the completion and working of three lines of railway, and in case of failure in any one the absolute forfeiture of what has been constructed and of the plant belonging thereto shall take place under the said resolution and agreement; and provided further that this agreement and the matters and things herein contained shall only take effect after the legislation necessary for legalizing the same shall have been obtained.

AND WHEREAS since the execution of the said agreement by a certain Act of the Parliament of the Province, passed in the twenty-fourth year of Her Majesty's reign, entitled an Act to incorporate the Toronto Street Railway Company, it was among other things enacted that the said agreement should be held to be a valid agreement, and that the Corporation of the City of Toronto had full power and authority to enter into and make such agreement, upon the conditions and for the purpose therein mentioned, and the said Corporation was thereby authorized to pass any by-law or by-laws for the purpose of carrying the same into effect.

Now the Corporation of the City of Toronto, by the Council thereon, enact,

I.

That the said agreement hereinbefore recited shall be and the same is hereby ratified and confirmed—and the said Alexander Easton is hereby authorized to lay down Street Railways on King street, Queen street and Yonge street, and work the same under the conditions, provisos, and restrictions in the said resolutions and agreement contained, and such other regulations as are herein set forth or may from time to time be deemed necessary by said Council for the protection of the citizens of the said City of Toronto.

II.

That so soon as the said Railways or any of them are constructed and certified to in the manner and according to the terms of the said agreement, the said Alexander Easton may commence to run cars or carriages, and convey passengers thereon, and collect the fare for the same as settled by the said resolution and agreement, and fully operate the said roads.

III.

That before the certificate hereinbefore referred to shall be granted, the said Alexander Easton shall submit to the Council of the Corporation of the City of Toronto for their approval, the rules and regulations for the government and guidance of the conductors and drivers upon the said railways, and others connected with the working thereof; which said rules and regulations, when approved by the said Council, shall be posted in some conspicuous place in each car or carriage—and no car or carriage shall be run upon any of the said railways without a copy of such rules and regulations being so placed therein.

IV.

That the cars and carriages of the said Alexander Easton while running on the said railways, or any of them shall have the right to use the said railways as against all other vehicles whatsoever, and all other such vehicles using the said railways, whether meeting or proceeding in the same direction as the said cars or carriages, shall turn out of the said track of the said railways and permit the said cars and carriages to pass, and shall in no case, and under no pretence whatever obstruct or hinder the passage thereof, and the free use of said railways by the said cars and carriages of the said Alexander Easton.

V.

Any person guilty of any infraction of any of the provisions of this by-law shall on conviction before the Mayor, Police Magistrate, or any one or more of the Aldermen of the said City, forfeit and pay a fine of not less than One dollar, nor more than Twenty dollars, such penalty to be recovered by distress and sale of the goods and chattels of the offender, or by imprisonment in case of non-payment of the fine, or any part thereof not exceeding twenty-one days,—provided always that the rights conferred upon the said Alexander Easton by this By-law and the agreement hereby confirmed shall in no case be taken to prevent the Corporation of the City of Toronto or their grantees from crossing the railway of the said Alexander Easton by other railways traversing other streets, the provisions of the twenty-fourth resolution being first complied with, but such right to cross the same is hereby expressly reserved.

II.

The original Act of Incorporation of the Toronto Street Railway Co. is Chapter 88 of the Statutes of 1861 (24th Victoria), and is as follows:

AN ACT TO INCORPORATE THE TORONTO STREET RAILWAY COMPANY.

[Assented to 18th May, 1861.]

WHEREAS Alexander Easton has, by his petition, prayed that an association under the title of "The Toronto Street Railway Company," may be incorporated for

the purpose of constructing and operating Street Railways in the City of Toronto and the Municipalities adjoining thereto. And whereas it is expedient to grant the prayer of the petitioner: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The said petitioner, and certain other persons as shall become shareholders of the said company, are hereby constituted a body corporate and politic, for the purposes herein mentioned, by the name of "The Toronto Street Railway Company."

Repealed by the Act 36 Vic., cap. 101, s. 7, which is printed post at pp. 22-24.

2. The capital stock of the company shall be two hundred thousand dollars, in share of twenty-five dollars each.

Repealed by the Act 36 Vic., cap. 101, s. 7, which is printed post at pp. 22-24.

3. The company may commence operations and exercise the powers hereby granted, so soon as one hundred thousand dollars of the capital stock shall be subscribed and twenty per cent. thereon shall be paid up; provided always, that no less than seven persons, residents and ratepayers of the said City and the other Municipalities, shall be subscribers to an amount of not less than twenty thousand dollars.

Repealed by the Act 36 Vic., cap. 101, s. 7, which is printed post at pp. 22-24.

4. The company are hereby authorized and empowered to construct, complete, maintain and operate a double or single iron railway, with the necessary side tracks, switches and turn-outs, for the passage of cars, carriages and other vehicles adapted to the same, upon and along any of the streets or highways in the City of Toronto and the municipalities immediately adjoining the limits of the said City, or any of them, and to take, transport and carry passengers upon the same by the power and force of animals, and to construct and maintain all necessary works, buildings and conveniences therewith connected.

5. The company shall have full power and authority to use and occupy any and such parts of any of the streets or highways aforesaid, as may be required for the purpose of their railway tracks and the laying of the rails and the running of their cars and carriages; provided always, that the consent of the said City and Municipalities, respectively, shall be first had and obtained, who are hereby respectively authorized to grant permission to the said company to construct their railways as aforesaid within their respective limits, across and along, and to use and occupy the said streets or highways or any part of them for that purpose, upon such conditions and for such period or periods as may be respectively agreed upon between the company and the said City or other Municipalities aforesaid, or any of them.

6. The rails of the railway shall be laid flush with the streets and highways, and the railway tracks shall conform to the grades of the same, so as to offer the

least possible impediment to the ordinary traffic of the said streets and highways; and the gauge shall be such that the ordinary vehicles now in use may travel on the said tracks, which it shall and may be lawful for them to do, provided they do not interfere with or impede the running of the cars of the company; and in all cases, any carriage or vehicle coming in the opposite direction to the cars, shall be required to turn off the track.

7. The affairs of the Company shall be under the control of and shall be managed and conducted by a Board of Directors of not less than three nor more than seven, each of whom shall be a stockholder to an amount of not less than one hundred dollars, and shall be elected on the first day of October of any year, at the office of the company; and all such elections shall be by ballot, by a plurality of the votes of the stockholders present, each share to have one vote, and stockholders not personally attending may vote by proxy; and the directors so chosen shall, as soon as may be, elect one of their number to be president, which president and directors shall continue in office one year, and until others shall be chosen to fill their places; and, if any vacancy shall at any time happen of the president or directors, the remaining directors shall supply such vacancy for the remainder of the year.

8. Alexander Easton, Alexander Bleekley and Daniel Smith, shall be the first directors of the company, and the said Alexander Easton the first President thereof, who shall severally hold their offices till the first day of October next after the company go into operation.

Repealed by the Act 36 Vic., cap. 101, s. 7, which is printed post at pp. 22-24.

9. The directors of the Company shall have full power and authority to make, amend, repeal and re-enact all such by-laws, rules, resolutions and regulations, as shall appear to them proper and necessary, touching the well ordering of the Company, the number of directors, the acquirements, management and disposition of its stock, property and effects, and of its affairs and business, the entering into arrangements and contracts with the said City or Municipalities, the declaration and payment of dividends out of the profits of said Company, the form and issuing of stock certificates, and the transfer of shares, the calling of special and general meetings of the Company, the appointment, removal and remuneration of all officers, agents, clerks, workmen and servants of the Company, the fares to be received from persons transported over the railway or any part thereof, and in general to do all things that may be necessary to carry out the objects and the exercise of any power incident to the Company.

10. The stock of the Company shall be deemed personal estate, and shall be transferable in such way as the directors shall by by-law direct.

11. If the election of directors be not made on the day appointed by this Act the Company shall not for that reason be dissolved; but the stockholders may hold the election on any other day in the manner provided for by any by-law passed for that purpose; and all acts of directors, until their successors are elected shall be valid and binding upon the Company.

12. The Company may purchase, lease, hold or acquire, and transfer any real or personal estate necessary for carrying on the operations of the Company.

13. The directors of the Company may, from time to time, raise or borrow for the purposes of the Company, any sum or sums not exceeding in the whole one hundred thousand dollars by the issue of bonds or debentures, in sums of not less than one hundred dollars, on such terms and credit as they may think proper, and may pledge or mortgage all the property, tolls and income of the company, or any part thereof, for the repayment of the moneys so raised or borrowed and the interest thereon, provided always, that the consent of three fourths in value of the stockholders of the company shall be first had and obtained at a special meeting to be called and held for that purpose.

14. The said City and the said adjoining Municipalities, or any of them, and the said company, are respectively hereby authorized to make and to enter into any agreement or covenants relating to the construction of the said railway, for the paving, macadamizing, repairing and grading of the streets or highways, and the construction, opening of and repairing of drains or sewers, and the laying of gas and water pipes in the said streets and highways, the location of the railway and the particular street along which the same shall be laid, the pattern of rail, the time and speed of running of the cars, the amount of license to be paid by the company annually, the amount of fares to be paid by the passengers, the time within which the works are to be commenced, the manner of proceeding with the same and the time for completion, and generally for the safety and convenience of passengers, the conduct of the agents and servants of the company, and the non-obstructing or impeding of the ordinary traffic.

15. The said City and the said Municipalities are hereby authorized to pass the By-law or By-laws, and to amend, repeal and enact the same, for the purpose of carrying into effect any such agreements or covenants, and containing all necessary clauses, provisions, rules and regulations for the conduct of all parties concerned, and for the enjoining obedience thereto, and also for the facilitating the running of the company's cars, and for regulating the traffic and conduct of all persons travelling upon the streets and highways through which the said railway may pass.

16. And whereas the said Corporation of Toronto, on the twenty-sixth day of March, 1861, entered into an agreement, bearing that date, under the seal of the said City, with the said Alexander Easton, for the construction and operating of Street Railways within the said City, upon certain conditions therein mentioned, and among other things it was agreed that so soon as the Legislative sanction was given to the same that a By-law of the said City should be passed in accordance therewith, therefore the said recited agreement shall be held to be a valid and binding agreement, and that the Corporation of Toronto had full power and authority to enter into and make such agreement upon the conditions and for the purposes therein mentioned, and the said Corporation are hereby authorized to pass any By-law or By-laws for the purpose of carrying into effect the said recited agreement.

17. This Act shall be deemed a Public Act.

III.

The Toronto Street Railway Company, incorporated by the above Act, having bonded and mortgaged their railway, and being unable to pay the accrued interest on their bonds, applied in 1869 to the Legislature of Ontario for relief, and obtained an Act (82 Victoria, cap. 81), which is as follows:

AN ACT FOR THE RELIEF OF THE TORONTO STREET RAILWAY COMPANY, AND TO PROVIDE FOR THE SALE OF THEIR RAILWAY, AND FOR OTHER PURPOSES.

[Assented to 23rd Jan., 1869.]

WHEREAS the interest on the bonds issued by the Toronto Street Railway Company, and secured by the mortgage of the said railway and other the property of the said company, to the Honourable William Cayley, as trustee for the holders of the said bonds is in arrear, and the company has also become otherwise indebted; and whereas judgment has been recovered against the said company for a large amount, and the appointment of a receiver of the income and tolls of the said company has been directed by the Court of Chancery for Ontario; and, whereas the said railway is out of repair, and the keeping open of the railway for traffic which is of the utmost importance to the citizens of Toronto is imperilled; and, whereas it is necessary that the said railway and its franchises should be absolutely sold to secure the uninterrupted working of the said railway:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Notwithstanding anything in any law or statute to the contrary, it shall be lawful for the said William Cayley, mortgagee in trust as aforesaid, or any judgment creditor of the said company, to proceed upon his mortgage or execution against goods, as the case may be, and sell thereunder the said railway, and all the chattels, rights, privileges and franchises of the said company, and all the appurtenances by public auction, of which one month's notice shall be given in the *Ontario Gazette* and three insertions in each week of the three weeks preceeding the sale in two daily papers in the City of Toronto and whether the said William Cayley be in possession of the said railway or not; and any mortgagee or creditor of the said railway company may become the purchaser of the said railway at such sale, and such sale shall extinguish all mortgages, bonds, judgments and claims whatsoever existing at the time of the said sale of such railway, in so far as they are or may constitute a lien or charge upon or affect the said railway chattels, rights, privileges, franchises or appurtenances; and by and under such sale, the said purchaser, his heirs or assigns, shall acquire a good title of the said railway, and all the chattels, rights, privileges, franchises and appur-

tenances hereto belonging, or in anywise appertaining, freed and discharged from any claim and encumbrance whatsoever, and shall have full power to sell and dispose of the said railway rights, privileges and franchises, or to use and work the same upon the streets in the City of Toronto on which the said railway now is, or upon such other streets as may be desirable or for the public interest, the authority or permission of the Corporation of the City of Toronto or adjacent municipality, for the removal or transfer of the said railway to such other streets, or the further construction of the said railway upon other streets than those now traversed by it, being first had and obtained by a By-law of such Corporation duly passed for that purpose; and such purchaser and the Corporation of the City of Toronto shall have power, and are hereby authorized to enter into contracts for the grading or altering the grader or repairing of the streets so traversed or to be traversed by the said railway; and generally, such purchaser shall and may have, enjoy, exercise, enforce all the rights, powers, claims, benefits, franchises and privileges granted to, or conferred on, or held, possessed or enjoyed by the said railway company by or under the Act of Incorporation of the said Street Railway Company, or any amendments thereof, as fully and effectually as if such charter had been granted to such purchaser, and shall be subject to all the obligations imposed by the original Act of Incorporation upon the company: provided always, that such purchaser or any proprietor of the railway for the time being, when snow falls to the depth of six inches or upwards, shall not at any time between the first day of December and the fifteenth day of March following, plough up or remove the snow from the track of the said railway or from the streets in which such tracks are or may be hereafter laid. [See words added by 39 Vic., cap. 63, s. 2. (Next Act)].

2. Such transfer may be affected by deed under the hand and seal of the said William Cayley, if sold by him, or of the sheriff selling the said railway, if the same shall be sold under execution.

3. The purchaser shall, by the first day of August next, after the passing of this Act, put the railway in such condition and state of repair as is contemplated by the Act incorporating the said company, to the satisfaction of such person as the Court of Chancery or a judge thereof shall appoint, which appointment the said court or judge is hereby empowered to make; and, in case the purchaser fails in this respect, nothing herein contained shall impair or affect any decree pronounced or to be pronounced in a certain suit in the said court in the name of Her Majesty's Attorney-General, on the relation of William Hewett and others against the said company. *

4. The purchase money upon such sale, after paying the expenses thereof, shall be paid to the several creditors of the company according to their priorities as they may legally exist, or as they may be settled by the said Court of Chancery in any suit now pending or hereafter to be brought in the said court; and such purchaser, his heirs or assigns, may make such terms for the payment or security of the purchase money with such creditors as they may agree upon, Provided always, that nothing herein contained shall prevent, nor shall any law or practice to the contrary prevent, any mortgagee or creditor of the said company becoming a purchaser of the said railway as aforesaid.

IV.

Under the authority of the foregoing Act the franchise and property of the Toronto Street Railway Company were sold to Wm. T. Kiely and George W. Kiely, who, in 1878, obtained the following Act of Incorporation from the Legislature of Ontario (36 Victoria, cap. 101):

AN ACT TO REMOVE CERTAIN DOUBTS AS TO THE POWERS OF THE PROPRIETORS OF THE TORONTO STREET RAILWAY COMPANY, AND TO INCORPORATE THEM AND OTHERS UNDER THE NAME OF "THE TORONTO STREET RAILWAY COMPANY," AND FOR OTHER PURPOSES.

[Assented to 29th March, 1878.]

WHEREAS William Thomas Kiely, and George Washington Kiely, the present proprietors of the Toronto Street Railway, have by their petition prayed that certain doubts as to their powers to issue bonds or debentures upon their said railway may be removed; and that they and others may for such and other purposes be incorporated, under the style of "The Toronto Street Railway Company"; And whereas it is expedient to grant the prayer of the said petitioners: Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The said petitioners, William Thomas Kiely and George Washington Kiely, and such other persons as shall become shareholders in the company, are hereby constituted a body corporate and politic, by the name of "The Toronto Street Railway Company."
2. The capital stock of the said company shall be two hundred thousand dollars, in shares of one hundred dollars each; and such stock shall be deemed personal estate, and shall be transferable in such a way as the directors shall by by-law direct.
3. The directors of the said company may from time to time issue bonds or debentures in sums of not less than one hundred dollars each, at such rate of interest, and redeemable at such times and places as they may determine; and such bonds or debentures may be made payable to the bearer or bearers of the same or otherwise, but the whole amount of such bonds or debentures shall not exceed the sum of one hundred thousand dollars; and may pledge or mortgage

the said railway and all the property, tolls or income of the company, or any part thereof; and may sell, pledge or hypothecate the said bonds or debentures, or any part of the same: Provided always, that the consent of three-fourths in value of the shareholders of the company shall be first had and obtained at a special meeting to be called for that purpose; and the bonds or debentures so issued shall without registration, or formal mortgage or conveyance, be taken and considered to be a charge upon the said railway, rolling stock, equipments and motive power thereunto belonging, and upon the said lands, tolls, revenues and other property of the company, for the due payment of the amounts payable by virtue thereof, and the interest thereon; and each holder of any bond or debenture shall be deemed to be a mortgagee of the said railway, appurtenances, lands, tolls, revenues, and other property *pro rata* with the other holders of such bonds or debentures: Provided always, that nothing in this Act contained shall be held or construed to prejudicially affect the rights or priorities of any existing mortgages of, or encumbrances upon the said railway, or any of them, and any lien or encumbrance which may be created under this Act shall be subject to such existing mortgages.

4. The said William Thomas Kiely, the said George Washington Kiely and Maurice Kiely, senior, shall be the first directors of the said company, and the said William Thomas Kiely the first president thereof, who shall severally hold office till the first day of October next after the framing of this Act.

5. The said company may commence operations, and exercise the powers hereby granted, immediately after the framing of this Act.

6. The said company shall subject to the claims of the existing mortgagees, and subject to the proviso hereinafter contained, have, possess and enjoy the said railway and all the property of every nature or kind in anywise appertaining to the said railway, now possessed or enjoyed by the said proprietors thereof; and shall have, possess, and enjoy all the rights, powers, privileges, benefits and franchises of every nature or kind that are now possessed or enjoyed by the said proprietors, or were possessed or acquired by the purchaser who purchased the same under the authority of, and pursuant to the provisions of an Act of the Legislative Assembly of the Province of Ontario, passed in the thirty second year of the reign of Her Majesty Queen Victoria, chaptered eighty-one, and intituled "An Act for the relief of the Toronto Street Railway Company, and to provide for the sale of the said Railway, and for other purposes," and shall be subject to all the obligations imposed by the said Act, and also by an Act of the Parliament of the late Province of Canada, passed in the twenty-fourth year of the reign of Her Majesty Queen Victoria, chaptered eighty-three, and intituled "An Act to incorporate the Toronto Street Railway Company," and shall be subject also to any valid and subsisting agreements, covenants, and by-laws made and enacted, by and between the Corporation of the City of Toronto and the said former Company, or any of the proprietors under any of the aforesaid Acts: Provided always, and it is hereby further enacted, that nothing in this Act contained shall be held or construed to effect in any manner the reports of liabilities, obligations, duties, conditions and penalties to which the present proprietors of the said road, or the former Toronto Street Railway Company, or the company hereby incorporated

were, or are subject to by any agreement, by-law, or the said Acts of Parliament heretofore made, passed and enacted in respect thereof, or of any of the parties to a certain suit now pending in Her Majesty's Court of Chancery for the Province of Ontario, wherein Her Majesty's Attorney-General for the said Province, upon the relation of John Fannon Lash and others, is informant, and the said proprietors of the said railway and others are defendants; and that notwithstanding anything herein contained, the said suit may be proceeded with and conducted to a final end and determination in the same manner as if this Act had not been passed; and that the said suit shall not abate by reason of the passing of this Act, but the said company hereby incorporated shall be made parties thereto, and the said suit stand immediately thereupon in the same plight and condition as it is in at present.

(See sec. 1 of next Act.)

7. Sections one, two, three and eight of the Act of the Parliament of the late Province of Canada, passed in the twenty-fourth year of the reign of Her Majesty and chaptered eighty-three, are hereby repealed; and each and every other section, of the said Act of the late Province of Canada shall apply to the company incorporated by this Act; and the company hereby incorporated shall have, possess and enjoy all the rights, benefits and privileges by said other sections conferred on the company thereby incorporated.

V.

In 1876 the Corporation of the City of Toronto obtained an Act amending the Charter of the Toronto Street Railway Company, which is as follows :

39 VIC., CAP. 63.

AN ACT RESPECTING THE CITY OF TORONTO, THE TORONTO STREET RAILWAY COMPANY AND OTHER MATTERS.

[Assented to 10th February, 1876.]

1. The Act passed in the thirty-sixth year of Her Majesty's reign, chaptered one hundred and one, is hereby amended by adding at the end of section six the words :

" Provided,

(1) The said Toronto Street Railway Company in repairing the roadway between their rails and for one foot six inches on the outside of each rail, shall, within the City of Toronto, be bound to use for such repairs the same materials, and mode of construction as that from time to time in use by the city corporation for the remainder of the street, unless, and while compliance with this condition is, in the opinion of the City Engineer for the time being of the City of Toronto, impracticable by reason of such remainder of the street not being so constructed or

in such state as will enable the said Company to comply therewith, and where the material laid down upon such remainder of the street is macadam or gravel, it shall be optional with the said The Toronto Street Railway Company to use stone paving.

(2) [Repealed by sec. 1 of next Act, which see.]

(8) Subject to the provisions hereinbefore contained, should the said Railway Company neglect to keep the track, or roadway, or crossings, or the space of eighteen inches on the outside the rails in good condition, or to have the necessary repairs made thereon, the City Engineer or other proper officer shall give written notice at the head office of the Company, requiring the said repairs to be made forthwith, and unless such repairs are commenced within five days and carried on with all reasonable despatch to the satisfaction of the City Engineer, the said engineer may cause such repairs to be made at the expense of the City, and the amount so expended shall be recoverable against the said Company in any court of competent jurisdiction.

[Two new sub-sections added by next Act, which see.]

4. The first section of an Act passed in the thirty-second year of Her Majesty's reign, chaptered eighty-one, entitled, "An Act for the relief of the Toronto Street Railway Company and for other purposes," is hereby amended by adding to the proviso at the end thereof the words, "unless by the use of the most improved and effective apparatus obtainable for that purpose, and subject to the test and approval of the Engineer of the City of Toronto."

VI.

In 1877 the above Act was amended at the instance of the Corporation of the City of Toronto by 40 Vic., cap. 85, which is as follows :

AN ACT RESPECTING THE TORONTO STREET RAILWAY COMPANY.

[Assented to 2nd March, 1877.]

WHEREAS the Corporation of the City of Toronto have, by their petition, prayed for certain amendments to the Toronto Street Railway Company's Acts; and whereas it is expedient to grant the prayer of the said petition :

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. Sub-section two of section one of 39th Victoria, chapter 68 is hereby repealed, and the following inserted in lieu thereof :

(2) "The said Toronto Street Railway Company shall be bound to construct, renew, maintain and keep in good order and repair the roadway between the rails, and for one foot and six inches outside each rail, using for that purpose the same material and mode of construction as that which may from time to time be

adopted and used for the remaining portion of the street by the Corporation of the Municipality in which the road or street is situate: Provided that where the Corporation of the City of Toronto adopts and uses on any street or portion of street traversed by the said railway, a permanent pavement of wood, stone, asphalt, or other material of the like permanent character, the said Street Railway Company shall not in such case be bound to construct the same or to pay more than the cost price of such pavement over the space between their rails and for one foot six inches outside of each rail, and as against the said company such price shall not exceed in any case the sum of two dollars and fifty cents per square yard."

2. Section one of the said Act is hereby amended by adding thereto the following sub-sections, which shall stand as sub-sections four and five of said section one.

"4. In case the Corporation of the said City shall determine to construct or renew the paving or macadam on any street traversed by the said railway, the said Company shall be bound within one month after receipt of notice in writing, requiring them to do so, (in which notice shall be specified the nature of the material or kind of pavement intended to be used, the street on which it is to be used, and the time when the work is to be commenced,) to construct or renew, (subject to the provisions of this Act,) the paving or macadam on their roadway, and for one foot and six inches outside each rail, using the same material and mode of construction as that used for the remaining portions of the street by the Corporation of the said City, and to carry on the work of construction or renewal with all reasonable despatch to the satisfaction of the City Engineer of the said City of Toronto, and in the event of the said company failing to do so the said Engineer may cause such work to be done at the expense of the said City, and of the amount so expended an amount not exceeding the sum of two dollars and fifty cents per square yard, shall be recoverable against the said Company in any court of competent jurisdiction, or by assessment as hereinafter provided, and the work of construction or renewal shall be proceeded with simultaneously over the roadway of the said Company, and the remainder of the street, whether the said Company shall conform to the notice aforesaid, or the said Corporation shall perform the work under the power conferred on it in this sub-section.

"5. If the said Corporation give the notice mentioned on the next preceding sub-section and do not themselves proceed according to the terms thereof within the time thereby limited, they shall be liable to pay to the Railway Company such damages as may have been thereby occasioned to the said Railway Company."

3. Whenever the Corporation of the said City shall change the kind of paving, (not being macadam, cobble stone or boulder stone,) hereafter to be constructed on any street traversed by the said Railway, before such paving is worn out, whereby the same is dispensed with, the Corporation shall be bound to make good to the said Company the value of the existing paving for the purposes of the said Company, the amount thereof to be ascertained in case of dispute by arbitration under the provisions of the Municipal Act then in force:

Provided that this section shall not apply to paving which the said Company shall not have hereafter constructed or paid for;

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And provided also, that the determination of the City Engineer, evidenced by his certificate in writing, shall be conclusive evidence that the paving is worn out or not, according to the terms of such certificate.

4. In every case of construction or renewal of any kind of permanent pavement upon any of the streets occupied by the said Railway Company, the said Company shall have the option of constructing their portion of any such pavement, or, at their request, the said Corporation of the City of Toronto shall construct the same, and in every such case the said Corporation shall assess an annual rate, covering interest and sinking fund, extending over the like period as that upon which the assessment upon the adjacent ratepayers is adjusted, upon the said Company for the cost thereof not exceeding the said sum of two dollars and fifty cents per square yard, with full power to the said Corporation to raise such sum by an issue of debentures and to collect the same in the manner provided under the Municipal Act for the construction of local improvements.

5. If the Corporation of the City of Toronto shall at any time elect to assume the said railway under the provisions of the agreement and by-law in that behalf the arbitrators appointed to determine the value of the real and personal property of the said Company shall also estimate as an asset of the said Company the value to the said Company of any permanent pavement hereafter constructed or paid for by the said Company for the balance of the life of the said pavement.

The three next following Acts explain themselves :

VII.

AN ACT RESPECTING THE CITY OF TORONTO.

(46 VIC., CAP. 48.)

[Assented to 1st February, 1888.]

4. Notwithstanding anything in the said Act passed in the forty-second year of the reign of Her Majesty and chaptered seventy-five, or any other Act passed by the Legislature of Ontario to the contrary, all by-laws passed by the said Council of the Corporation of the City of Toronto, for borrowing money on the general credit of the City, to provide for the payment of the City's share of the local improvements and works constructed and made since the said Act was passed for borrowing money by the said issue of debentures secured by special assessments on the Toronto Street Railway Company, to provide for the payment of the costs of their shares of such local improvements, and all by-laws passed by the said Council for borrowing money by the issue of debentures secured by special assessment on the real property benefitted by such works, are hereby declared valid and effectual.

VIII.

AN ACT RESPECTING THE CITY OF TORONTO.

(47 VIC., CAP. 59.)

[Assented to 25th March, 1884.]

1. The Council of the Corporation of the City of Toronto may pass by-laws for

the following, amongst other purposes, notwithstanding anything in the *Consolidated Municipal Act, 1883*, or any special or private Act relating to the said City of Toronto contained to the contrary.

(1)

(2)

(3) In the case of the Toronto Street Railway Company or any other body corporate who may be assessable under any general or special Act for the payment of the costs of any portion of any work, improvement or service, otherwise than in respect of real property fronting or abutting on any street benefitted by such improvement, work or service, the said Company or body corporate, as the case may be, shall be assessable respectively at their head office either in one sum, for their share of the cost of the work of improvement, or in case the cost of the work is payable in instalments, then for such sum per annum for the term of years within which the other portions of such debt are made payable, as will be sufficient to pay off the amount of the debt created on the security of their assessment, together with interest at the same rate per annum as is chargeable and payable in respect of the other portions of the debt, and such assessment shall constitute a lien and charge upon any real estate owned or belonging to the said Company, or body corporate.

IX.

AN ACT TO AUTHORIZE THE TORONTO STREET RAILWAY COMPANY TO ISSUE MORTGAGE DEBENTURES, AND FOR OTHER PURPOSES.

(47 VIC., CAP. 77.)

[Assented to 25th March, 1884.]

WHEREAS, the Toronto Street Railway Company has by its petition prayed that an Act may be passed enabling the said Company to issue mortgage debentures, and for other purposes; and whereas, it is expedient to grant the prayer of the said petition:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:--

1. It shall and may be lawful for the said Toronto Street Railway Company, with the consent of a majority representing two-thirds in value of the shareholders therein, present in person or by proxy, at a meeting specially called for that purpose, to make and issue from time to time debentures to an amount not exceeding six hundred thousand dollars, payable at such time and place, and bearing such rate of interest as the said Company by such majority as aforesaid may determine, and such debentures shall, without registration or formal mortgage or conveyance, be a charge upon the said railway, its rolling stock, equipments and motive power thereto belonging, and upon the lands, tolls, revenues and other property of the said Company, for the due payment of the amounts payable by virtue of such debentures and the interest thereon; and each holder

of any of such debentures shall be deemed to be a mortgagee of the said Company, appurtenances, lands, tolls, revenues and other property *pro rata* with the other holders of such debentures.

2. Upon and after the issue by the said Company of the debentures under this Act, all bonds or debentures heretofore issued by the said Company under any former Act, whether of the late Province of Canada or of this Province and outstanding, shall be called in, redeemed and cancelled, and the said bonds or debentures so called in shall, when delivered up, no longer form a charge upon the said railway, its rolling stock, equipments, or motive power thereto belonging, or upon the lands, tolls, revenues or other property of the said Company, or be of any force or effect; provided, however, that in the event of the said existing bondholders or debenture-holders failing to deliver up the bonds held by them, the said Company shall issue and reserve a sufficient amount of the debentures authorized to be issued by this Act, to meet and pay the said bonds or debentures not so delivered up by the holders thereof as aforesaid to be cancelled, and the interest thereon.

3. The debentures to be issued under this Act shall be under the seal of the Company and shall be signed by the President of the Company, and countersigned by the Secretary, and the said debentures and the coupons attached thereto providing for the payment of the interest thereupon, may be issued payable to bearer at such place or places as may be deemed advisable, and shall be transferable by delivery, and such transfer shall vest the property of such debentures in the holder thereof so as to enable him to maintain an action thereon in his own name.

4. The said debentures may be either perpetual or terminable, and may be made, executed and issued in such form as the said Company, with the consent provided for in the first section hereof, may determine.

5. None of said debentures shall be made for any sum less than one thousand dollars, and the said Company may either issue the whole of said debentures at one time, or may issue the same from time to time, as may be determined upon, with the consent provided in the first section hereof.

6. The said Company may from time to time, and at any time, sell, hypothecate or pledge, any of the said debentures to be issued under the provisions of this Act, subject to the restriction hereinbefore provided as to reserve for outstanding debentures of other issues, and may apply and use the proceeds for the benefit of the said Company as they see fit.

The next matters to be referred to are the following proceedings of the City Council :—

X.

To the Council of the Corporation of the City of Toronto :

The Board of Works beg to submit their Report No. 9.

At a meeting of the Board of Works held on the 5th instant, the proprietors of the Toronto Street Railroad submitted the accompanying sketch (*for which see original report*) of a rail to be used in any further extension of road that may be decided on.

The Board having approved of the same, recommend it to the consideration of the Council for general adoption.

All of which is respectfully submitted.

Board of Works Office, June 9th, 1873.

(Appendix 116, Minutes of Council, 1873.)

In Council :—

The Council resolved itself into Committee of the Whole on report No. 9 of the Board of Works, Ald. Close in the chair.

The Committee rose. Ald. Close reported that the Committee had adopted the report without amendment.

The report was received.

The report was adopted.

(Minute No. 534, Minutes of Council, 1873.)

XI.

To the Council of the Corporation of the City of Toronto :

The Select Committee on Railways beg respectfully to report :

That by resolution of Council of the 10th February, 1873, a Select Committee, to be called "The Street Railway Committee," was appointed, with instructions to consider the most likely routes for street railway construction or extension, the best kind of roadway and other matters pertaining thereto, and to report to the Council at an early day.

In conformity with the terms expressed in the above mentioned resolution, your Committee have agreed to recommend that the north-eastern route of the proposed Street Railway be as follows :

"Commencing on King street east, at the intersection of Sherbourne street; thence north along Sherbourne street to Carlton street; thence along Carlton

street eastward to Parliament street; thence along Parliament street northward to Winchester street."

The description of rail to be used in any further extension of the Street Railway, having already been decided upon by the adoption by the Council of Report No. 9 of the Board of Works, is, in the opinion of the Committee, unnecessary to be referred to; but they would recommend that before any operations are commenced by the Street Railway Committee in the matter of the proposed new route, plans and details of the same to be submitted to the Board of Works for their approval.

All of which is respectfully submitted.

Committee Rooms, Toronto, December 16th, 1878.

(Appendix 286, Minutes of Council, 1878.)

In Council :—

The Council resolved itself into Committee of the Whole on the report of the Select Committee on Street Railways, Ald. Sheard in the chair.

The Committee rose. Ald. Sheard reported that the Committee had adopted the report without amendment.

The report was received.

The report was adopted.

XII.

REPORT No. 11 OF THE BOARD OF WORKS.

To the Council of the Corporation of the City of Toronto.

The Board of Works having had under consideration the petition of Cosgrove & Co., and sixty others, that the railroad on King street be extended from Bathurst to Niagara street;

The Board respectfully reports that the section of street on which the extension is prayed for is not within the limits included in the original charter, and therefore recommends that the existing Railway Act be amended before the privileges now sought for are conceded.

All of which is respectfully submitted.

Board of Works Office, 31st August, 1874.

In Council :

Ald. Colwell, seconded by Ald. Ball, moves that in order to meet the views and promote the interests of a large number of citizens (in furtherance of which a petition, numerously signed, has been presented to this Council), the Council do

authorize and instruct the Toronto Street Railway Company to extend their track to Niagara street, on King street, in order to have the same in readiness for use at the approaching Provincial Fair, and that the same conditions, limitations and restrictions apply to this extension as to the remainder of the road; upon which the yeas and nays were taken as follows:

YEAS—Messrs. Ball, Baxter, Blevins, Britton, Close, Colwell, Davies, Dunn, Farley, Hayes, Mallon, Martin, Mutton, Spence, Tinning and Withrow—16.

NAYS—Messrs. Adamson, Hamilton and Sheard—3.

Carried in the affirmative by a majority of 13.

(Minute 842, Minutes of Council, August 31st, 1874.)

XIII.

In Council—

Ald. Blevins, seconded by Ald. Baxter, moves that whereas a petition signed by a large number of the residents and ratepayers of the Ward of St. David, was sometime since presented to the Council of the Corporation of the City of Toronto, praying that further facilities should be afforded by the said Council to aid and assist in the construction of Street Railways in and through the said city and therein; that a Street Railway should be constructed on Parliament Street, from King street northerly to Winchester street: that it be resolved by the Corporation of the City of Toronto, that the Toronto Street Railway Company be and they are hereby permitted and required to construct a Street Railway through Parliament Street aforesaid from its intersection with King Street to Winchester Street, in connection with their Street Railway on King Street aforesaid, and that they have the same in running order before the first day of November, 1874, in accordance with the laws relating to Street Railways and the construction thereof in the City of Toronto.

Ald. Withrow, seconded by Ald. Hamilton, in amendment moves that all after the word "moves" in the foregoing resolution be expunged, and the following inserted in lieu thereof: "That the matter of the Street Railway and its routes be referred to the Board of Works," which was lost.

Upon the question that the original resolution be adopted, it was carried.

(Minute No. 898, Minutes of Council, September 28th, 1874.)

XIV.

In Council—

Ald. Withrow, seconded by Ald. Mutton, moves that as a numerous signed petition has been presented to this Council praying for street railway accommodation on Sherbourne Street, as it is both necessary and desirable that such accommodation should be afforded; Be it therefore resolved, that the Toronto Street Railway Company be required to construct a street railway on Sherbourne Street.

from Bloor to King, along King to Church, along Church to Front, and along Front to the Union Station, and that that portion of the route from the Station to Carlton Street be constructed on or before the first day of December, 1874, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 812, Council Minutes, October 5th, 1874.)

XV.

To the Council of the Corporation of the City of Toronto :

The Board of Works beg to submit their Report No. 18 :

The Board of Works, to whom was submitted the undermentioned petition for the extension of the street railway from King street along Sherbourne street to Carlton, along Carlton to Parliament street, thence up Parliament street, viz :

Petition of Thomas Woodbridge and others,
Petition of J. S. Martin and others,
Petition of H. McLean and others,
Petition of H. P. Dwight and others,

beg to recommend that the Street Railway Company be directed to construct a street railway on Sherbourne street from Bloor to Palace street, along Palace and Front street to the Union Station.

All of which is respectfully submitted.

Board of Works, Minutes, 5th October, 1874.

In Council :—

Ald. Blevins, seconded by Ald. Davies, moves that the Toronto Street Railway Company be required to construct their line of railway along Carlton street east from Sherbourne street to Parliament street, and thence to the corner of Winchester street, in connection with their projected and in part constructed railway on Sherbourne street, and that they have the same constructed and in running order before the commencement of the winter of the present year, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 925, Minutes of Council, Oct. 12th, 1874.)

XVI.

In Council :—

Ald. Davies, seconded by Ald. Baxter, moves that the Toronto Street Railway Company be and is hereby respectfully requested to place such names on both sides of their cars, and such coloured lights on both ends of their cars, as will enable citizens and others to see at a glance what streets the cars travel upon, and to have

the lights so arranged that not only the streets upon which they travel may be known, but also the direction in which the cars are going, which was carried.

(Minutes of Council, December 14th, 1874.)

XVII.

BOARD OF WORKS REPORT No. 8.

• To the Council of the Corporation of the City of Toronto :

First.—The petition of R. Denison and others, for the extension of the street railway along Dundas street to the city limits having been considered by the Board, they beg to recommend the same for the favourable consideration of the Council.

All of which is respectfully submitted.

Board of Works Office, May 31st, 1875.

(App. 108, Minutes of Council, 1875.)

(There is nothing in the Council minutes to show what action was taken on the above report.—ED.)

XVIII.

In Council :—

Ald. Sheard, seconded by Ald. Henderson, moves that the City Solicitors be and are hereby instructed to collect without further delay all the moneys due to the City of Toronto by the Toronto Street Railway Company, for their portion of the block paving, which was laid on the railway track on King street, in this city, and that the 26th and 27th Rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 621, Minutes of Council, June 7th, 1875.)

XIX.

In Council :—

Ald. Boustead, seconded by Ald. Sheard, moves that the clerk be instructed to give the necessary notice, by advertisement, that this Council will apply to the Legislature of Ontario, at its next session, for amendments to the street railway charter, also the gas company's charter and the water works charter, as far as relates to the breaking up, repairing and keeping in repair, that portion of the streets through which their works pass, and other amendments. which was carried.

(Minute No. 987, Minutes of Council, July 15th, 1875.)

XX.

CITY SOLICITORS' OFFICE, November 1st, 1875.

Toronto Street Railway v. Fleming.

SIR,—We have the honor to enclose for the information of the council a copy of the judgment of the Court of Error and Appeal in the above case.

Your obedient servants,

ROBINSON & BIGGAR,

*City Solicitors.**Stephen Radcliffe, City Clerk.*

JUDGMENT OF THE COURT OF ERROR AND APPEAL

IN THE CASE OF

The Toronto Street Railway Company v. Fleming.

DRAPER, C. J., of appeal.—This case was argued before us on the 16th March last by C. R. W. Biggar, M.A., for the defendants, the City of Toronto, and R. A. Harrison, Q.C., and Thomas Ferguson, for the Street Railway.

I considered the case with much attention, and prepared a written judgment upon it. Unfortunately it has been mislaid. If there had been any doubt in my mind upon the question, I would have reconsidered the question involved; but in addition to my having arrived at what I deemed a satisfactory conclusion, I was favored with a perusal of the judgment which will be delivered by my brother Burton, and which contains all I had intended to say upon the subject. I will, therefore, do no more than recapitulate the grounds of my opinion.

1. That the decisions upon the Statute of Elizabeth (43rd Eliz. c. 2.) are not applicable by reason of the difference between that Act and our Assessment Acts. That statute directs the poor rate to be raised by taxation of every inhabitant, parson, vicar, and other and of every occupier of lands, houses, etc. Our statute imposes the assessments on property, real and personal.

2. There are decisions of the courts in England by which we are bound, and which I cannot on principle distinguish from this case, which affix the character of an easement of property of a similar character to that possessed by the Street Railway Company in this case. Our assessment laws do not include easements as the subjects of municipal taxes. I concur with my brother Burton in his reasons and conclusions.

BURTON, J.—This is a special case, under the provisions of the Common Law Procedure Act, without pleadings, for the purpose of raising the question whether the permanent way or track of the plaintiff's railway is liable to be assessed on real estate, it being admitted that the plaintiffs are not otherwise liable to be assessed in respect of it.

The right and title of the plaintiffs to the railway, its franchises and appurtenances were held under an Act of the Parliament of Ontario (86th Vic. cap. 101), which incorporated them, and legalized the agreement previously entered into with one Easton for its construction, and the purchase by and sale and conveyance of such railway and franchises, to the president of the plaintiffs' company. The agreement, the By-law of the Corporation and the Act of Parliament, are fully referred to in this statement of the case, and the report of the judgment of the court below.

The assessment was in respect of taxes for the year 1873, under the provisions of the Assessment Act of 1869, and the sole question for decision was whether it was legally liable to be assessed as real estate.

The Court of Queen's Bench have held that it was so liable, and this appeal is against that decision.

If this were a question arising under an Act similar in its provisions to the 43rd Eliz. cap. 2, I should have no hesitation in concurring in the conclusion arrived at by the learned CHIEF JUSTICE of the court below, and by Mr. Justice WILSON; but, with the utmost respect and deference for their opinions, I have been unable, after a very careful consideration of the cases cited there, and on the argument before us, to convince myself that these plaintiffs are liable upon the assessment which has been made upon the railway, treating it as real estate.

The Statute of Elizabeth was passed to throw a *personal charge* upon the occupiers of every description of real estate, but it was a *personal charge only*, not a charge upon the land. Our Assessment Act, on the other hand, does not profess to rate the individual in respect of the property or the occupation of it, but provides that "all land and *personal property* shall be liable to taxation," and then provides the machinery by which the assessment shall be made and the taxes levied. A man is not assessed by reason of his occupation of, or having some estate or interest in the lands, and the assessment made according to the value of that occupation or interest, but the land itself—the *corpus*, so to speak, is taxed, and the owner and the occupant are both made liable for the payment of the taxes thus imposed upon it.

This Act, like the Land Tax Act in England, contemplates, in my opinion, property to be let by a landlord to a tenant. The whole scope of each of them is to throw the tax as a charge upon the landlord, and the tenant having paid is entitled to deduct it out of the rent; and the provisions in reference to the sale, in the event of non-payment, are wholly inapplicable to such a subject as the property-sought now to be taxed. If this can be treated as non-resident land, the owners of which have requested to be placed upon the roll, this extraordinary result might follow, that the collector being authorized by section 97 to make distress upon any goods or chattels which may be found thereon, any traveller upon the highway, whose horse or vehicle may be upon the portion occupied by the track, will be liable to have them distrained for payment of this tax.

Then by section 107, the taxes, if unpaid, shall be a special lien, not upon the company's interest, but upon the *land*.

The sale, too (and the deed executed in pursuance of it), is not confined to the interest of the party assessed, but the sale of the land itself; and it is expressly

declared that it shall be final and binding upon the former owners of the land, and upon all persons claiming by, through, or under them. By section 188, the treasurer is to sell "so much of the lot" as may be sufficient to discharge the taxes.

During the twelve months allowed for redemption the purchaser is entitled to possession.

All these provisions seem to me to be inconsistent with the view that the interest of this company can be treated as "land" within the meaning of the Assessment Act. No doubt, it is an occupation of land, and the company, as occupiers, would, under the long current of decisions upon the Statute of Elizabeth, be liable in England to be rated for the relief of the poor.

The rails and sleepers, by being affixed to the realty, become part of that realty; but this cannot have the effect of making that realty taxable which the law has declared to be exempt. The ownership of the soil may be in individuals, subject to the rights of the public, or in the municipality, or in Her Majesty, and in either case the same, if used as a public road, or way, or square is exempt; the rails no longer remain chattels, but became part of that to which they are affixed, and if that be declared by law to be exempt, it does not lie in the power of the municipality or of a court of law to say that that exemption shall be partially inoperative.

Nor can the 7th sub-section of section 9 be invoked. That sub-section was inserted or amended to meet the case which presented itself in *Scragg v. London*, and affords a strong argument that by making special provision in the case there referred to, whilst the exemption under sub-section 6 is absolute—it was intended that this property should not be taxable; and it will be seen, however absurd it may seem for a municipality to tax its own property, that the property of a municipality, when occupied by a tenant or lessee other than a servant or officer of the corporation for the purpose thereof, is not exempt.

The learned Chief Justice of the Queen's Bench admits that if the case of the *Chelsea Water Works Co. v. Rowley* (12 Q. B. 859) stood alone, it would be a strong authority to show that the plaintiff's interest in the soil was a mere easement, and not liable therefore to be rated as land.

For the reasons I have given, I am of opinion that this assessment cannot be maintained, even though the plaintiff's interest were more than the easement; but the case of the *Chelsea Water Works Co. v. Rowley* decided, as I have already stated, under a statute much more analogous to our own, has been cited with approval in several more recent cases, and does not, in fact, conflict with any of them.

In *Regina v. Water Works Co.* (12 Q. B. 715), the same learned judge (Lord Campbell) delivered the judgment of the court, and after referring to the Statutes of Elizabeth, and saying that by a long series of cases it had been decided that Water and Gas Companies were, under the statute, liable as occupiers of land in respect of their pipes, which were laid beneath the soil, held that they were justified in holding that the company, who were the defendants in that case, were also ratable in the same character under the statute there under review, by which it

was provided that the rate should be levied on all persons "who should inhabit, hold, occupy, possess, or enjoy any houses, lands, tenements or hereditaments;" the distinguished case on that ground from *Chelsea Water Works Co. v. Rowley*; and COLERIDGE, J., remarks: "When the same words occur in different Acts having a similar object, we would endeavor to adopt the same construction in each case. The words in the local Act here are even more exclusive than those in 48 Elizabeth, and therefore there is no reason for giving a less extensive construction to the former than in the latter; and in *Regina v. Middlesex Waterworks Co.* (1 E. & E. 720), referred to by the learned Chief Justice as apparently inconsistent with Lord CAMPBELL's former decision, it is expressly held that the company has no legal or equitable interest in the land, but the case was decided on the question of occupation merely, and in accordance with all the previous decisions under the Statute of Elizabeth.

I am of opinion, therefore, that the property of the company referred to in this case was not liable to assessment as real estate; and it is a satisfaction to feel, in arriving at that conclusion, no injustice is done, as the capital stock of the company in the hands of the shareholders is assessed, or liable to be assessed; whereas, a contrary decision would render the company liable to be taxed, not only upon its capital, but also upon the iron rails and other property in which that capital has been invested.

I agree, therefore, with the other members of our court, that the judgment of the court below should be reversed.

PATTERSON, J.:

The case states—

First.—That the plaintiffs are the proprietors of the railway, known as the Toronto Street Railway, situate on Yonge street, Queen street, and King street in Toronto; that portions of the permanent way, or track, are situate on the public streets in five different wards of the City; the meaning of which statement I take to be, that the three streets named are public streets, and that the railway laid on them runs into five wards.

Second.—That the assessment in question is in respect of the portions of Queen street, Yonge street and King street, used by the plaintiffs for the purpose of their said railway, under the provisions of the statutes and by-law set out and referred to under the *third* and *fourth* heads; and

Fifth.—That the assessment was made under the Assessment Act of 1869 for taxes for 1878.

And the question stated is: whether the said property of the plaintiffs in the said wards, or any of them was, under all the circumstances liable to such assessment by the City, and it is stated to be agreed and admitted that unless the property could be assessed as *real estate*, within the meaning of the Assessment Act, it could not be assessed by the City.

By real estate I understand the parties to mean "land." Section 9 of the Act, which states what property shall be taxable, uses the word "land," and not the words "real estate"; and it is by no means clear that in the Act the terms are synonymous. They were so by express enactment in 13 and 14 Vic. c. 67, and in 16 Vic., c. 182. But in consolidating the latter Statute (C. S. U. C., cap. 55,

sec. 3) the form of words was used which has been preserved in section 8 of the Act of 1889, declaring the terms "land," "real property," and "real estate," respectively, shall include certain things not including the land itself, which was included in the definition in 13 and 14 Vic., c. 67. The land itself must be held to be included in the meaning of the word "land," but "real estate," and "real property,"—which are not now declared, or they were in the two earlier Acts, to mean the same as "land"—have a legal signification which embraces many interests, to express which the word "land" is not appropriate. I do not know that the Assessment Act assumes to deal with any interests in land which require to be expressed by any term more comprehensive than the word "land," although the words "real estate" are often used.

But for our present purpose it is necessary to note that *Land* is the word used in section 9. "All *Land* and personal property in the Province shall be liable to taxation, subject to the following exemptions." The personal property of an incorporated company is by section 36 protected from assessment against the corporation; therefore, unless the plaintiffs are assessable for "land" within the meaning of the Act, they are not assessable at all. It seems to me quite clear that by "land" in section 9 is meant the soil itself, including those things mentioned in section 3, viz.: "All buildings and other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the reality, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty," all of which without the aid of section 3 would in law be part of the land.

The absence from section 3 of all reference to estates or interests in land, and all the provisions of the Act respecting the mode of assessment, as in sections 21 to 34; and the provisions for the sale of lands for non-payment of taxes, make it perfectly apparent that it is the soil itself that is the subject of assessment and sale.

In the case of land vested in Her Majesty, and occupied by any person otherwise than in an official capacity, sub-section 2 of section 9 provides that "the occupant shall be assessed in respect thereof, but the property itself shall not be liable;" and section 127, providing for the sale of unpatented lands, saves the right of the Crown therein, but all other lands which are taxable are liable to be sold. Even the lands belonging to the municipality, if occupied by a tenant, are taxable and saleable in precisely the same way as the lands of any ratepayer, being excepted by sub-section 7 of section 9 from the exemptions.

There is no provision for taxing or selling the term or interest of the tenant. The *land* is to be assessed, and therefore the *land* is liable to be sold. The plaintiffs in this case are doubtless occupiers of *land*. The cases referred to in the judgments of the learned judges in the court below, and the later case of *The Pimlico Tramway Co. v. Greenwich*, L. R. 9, Q. B. 9, cited by Mr. Biggar, have abundantly established that position. The rights secured to the plaintiffs under the statutes and by-laws set out in the case, and their occupation of the streets under those rights, constitute property which is doubtless of great value to them. If there was a general law that all property should be assessable for municipal purposes, I should have no hesitation in deciding that this was assessable pro-

party. The question, however, is, Is it assessable as lands? Sub-section 6 of section 9 exempts "every public road and way, or public square." The property of these defendants is only land as being part of the public street. The facts stated in the case are that the streets in question are public streets, and that the assessment is in respect of the portions of the streets used for the purposes of the railway.

If this land is taxable it is liable to be sold for non-payment of taxes. In order to sell any right or interest, or franchise, or anything but the very land itself, some provision of law would be necessary which I do not find in the Assessment Act. Without resorting to the exemption in sub-section 6, I should hold that the whole scope of the Act, including the provisions for valuing land, the mode of assessment, the proceedings for the sale and conveyance of the land, and occupation of it by the purchaser, are so inapplicable as to show that this property is not taxable land; but having regard to the exemption of every public road, there is not, in my judgment, room for further argument. The streets remain public streets, and the plaintiffs are bound to keep them in such a state as that the railway shall not prevent the use of the street by ordinary vehicles.

What is it that is exempted by sub-section 6, the soil or the right of way over the soil? Evidently the soil itself, because the soil alone, and not a right of way, is land, and taxable unless exempted; and because, although the word "way," or even the word "road," may be ambiguous, there is no ambiguity in the words "public square," which occur in the same sub-section. In *Guelph v. Canada Co.*, (4 Grant, 689), the market square of Guelph was held to be dedicated to the public, and to be in fact a "public square," although the freehold remained in the Canada Company. I apprehend that under sub-section 6 the soil of that square would be exempt from taxation against the Canada Company who owned it, and that the exemption would be confined to the public right to use the square.

Then, if the soil of the street is exempt, I find nothing in the Act to say that the portion of it is not exempt which is occupied by the plaintiff's railway, while still remaining a part of the public road, but it is to be taxed, and (as the consequence would be), to be sold in case the taxes are not paid. The case cited of *Chelsea Waterworks Co. v. Rowley* (17 Q. B. 359), is very strongly in point, as under 38 George III. cap. 5, the land tax is chargeable to persons holding land or hereditaments, and (amongst other points of resemblance), the tax is thrown on the landlord by a provision very similar to section 28 of the Assessment Act, while the Statute 42 Elizabeth, cap. 2, under which the cases as to occupiers of land are decided, throws the poor rate on the occupier personally, and not on the land.

I agree in the conclusion arrived at by Mr. Justice MORRISON in the courts below, and am of opinion that the judgment should be reversed.

STRONG, J., concurred.

Appeal dismissed.

(Appendix 210, Minutes of Council, 1875.)

XXI.

In Council :—

Ald. Boustead, seconded by Ald. Withrow, moves that inasmuch as the Council has decided to request the Legislative Assembly of Ontario to amend the Municipal Act, as far as relates to the exemption of property from taxation, and also to amend the Waterworks, Consumer's Gas Company, and Street Railway Company's charters, be it resolved that the following be a committee for the purpose of preparing the necessary amendments required, and having the same submitted to the Council at as early a date as possible, viz.:—Aldermen Sheard, Withrow, Hamilton, Colwell, Adamson, Baxter, Ball, Gearing, and the mover, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 1110, Minutes of Council, November 8th, 1875.)

XXII.

To the Council of the Corporation of the City of Toronto :

The second report of the Select Committee on Amendments.

Your Committee have considered the amendments necessary to the Toronto Street Railway Company's and the Consumer's Gas Company's charters, and the "Municipal Institutions Act," and beg to report as follows :—

They recommend that the following amendments be petitioned for :

TORONTO STREET RAILWAY COMPANY.

That an humble petition be presented to His Honour the Lieut.-Governor, and to the Legislature of Ontario, praying that they may be pleased to amend the Act passed in the thirty-sixth year of Her Majesty's reign, entitled, "An Act to remove certain doubts as to the powers of the proprietors of the Toronto Street Railway, and to incorporate them and others under the name of 'The Toronto Street Railway Company,' and for other purposes."

1. That the said Toronto Street Railway Company shall be bound to construct and keep in good repair the roadway between the rails, and for one foot six inches outside of each rail, using for that purpose the same material and mode of construction as that which may from time to time be adopted for the remaining portion of the street by the corporation of the municipality in which the road is situate.

2. That whenever any portion of the said roadway so to be constructed and repaired by the said Company, within the limits of the City of Toronto, is not constructed or kept in repair to the satisfaction of the City Engineer, the same shall, upon notice given by said Engineer to the said Company, be constructed or repaired to the satisfaction of the said Engineer within forty-eight hours after the

receipt of such notice, and in case, after the expiration of the said forty-eight hours, the said Company have not taken action in accordance therewith to the satisfaction of the said Engineer, such repairs may be executed by the Corporation of the said City, and the expense thereof charged against the said Company, and in case the said Company shall refuse or neglect to pay to the Treasurer of the said City the amount of such expense for forty-eight hours after the same has been demanded in writing, the City Engineer may, by order in writing, prohibit the said Company from running any of their cars or omnibuses on the streets of the said City. Such order shall continue in force until revoked in writing by the said City Engineer, and for every car or omnibus which may be run upon any of the said streets during the continuance in force of such order the said Company shall be liable to a penalty of \$50, to be summarily recovered, with costs, by information before the Police Magistrate of the said city, or any Justice of the Peace sitting for him and by his request.

3. That notwithstanding anything in the Assessment Act contained, the track and permanent way of the said Street Railway Company shall be liable to taxation in the same manner as other land, real estate and real property.

All of which is respectfully submitted.

Committee Room, Toronto, 13th Dec., 1875.

(App. No. 232, Minutes of Council, 1875.)

In Council:—

The Council resolved itself into Committee of the Whole on Reports Nos. 1 and 2 of the Select Committee appointed to draft certain amendments to the Water Works, Gas Company's and Street Railway Company's charters, etc., for submission to the Ontario Legislature, Ald. Adamson in the chair. The Committee rose. Ald. Adamson reported Report No. 2 with amendments.

[No amendments relative to this matter.—ED.]

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Min. No. 1254, Minutes of Council, December 13th, 1875.)

XXIII.

In Council:—

Ald. Stanley, seconded by Ald. Boustead, moves that "Whereas it is the intention of the citizens of Toronto to apply to the Legislature of Ontario, at its next session, for such amendments to the charter of the Toronto Street Railway Company, as

will secure to the City of Toronto such protection as will compel the aforesaid Company to keep in repair that part of the roadway on which they have laid rails for street railway purposes: Be it resolved that this Council do appoint the Board of Works, His Worship the Mayor, Ald. Turner and the mover, a Special Committee, with power to act in conjunction with the Citizens' Committee, for the purpose of securing such protection as they may deem advisable," which was carried.

(Minute No. 906, Minutes of Council, May 29th, 1876.)

XXIV.

CITY SOLICITORS' OFFICE, Toronto, Jan. 24th, 1876.

DEAR SIR,—We have the honor to forward for the information of the Council, copies of the bills introduced into the House by the Corporation in reference to

1. The purchase of a portion of the Necropolis for an Eastern Park, (No. 84).
2. To amend the Waterworks Acts (No. 92); and
3. To empower the City of Toronto to dispose of a portion of the "Garrison Reserve" (No. 118),—together with a printed memo. in support of these bills submitted by us to the Private Bills Committee.

The bills enclosed are in the form in which they have been passed by the Private Bills Committee, and in which they will in all probability be adopted by the Legislature.

Bill No. 108, containing amendments to the charters of the Toronto Street Railway and the Consumers' Gas Company was adopted with some amendments; but, after a stormy discussion, the clauses relative to exemptions from taxation, the construction of sewers without a petition, and the employment of prisoners confined in the City gaol, were struck out, the Government being opposed to private legislation on these subjects.

Your obedient servants,

ROBINSON & BIGGAR,

City Solicitors.

Stephen Radcliffe, Esq., City Clerk.

(Appendix No. 7 to Minutes of Council, 1876.)

XXV.

In Council:—

Ald. Withrow, seconded by Ald. Boustead, moves that it be an instruction to the City Engineer to report to this Council at its next meeting, on the present condition of that portion of the several streets of the City on which the rails of the Toronto Street Railway Company are laid, and which, by the provisions of their charter, they are bound to keep in good order; and also what action he has taken or intends to take in the matter to compel compliance with such provisions, which was carried.

(Minute No. 1329, Minutes of Council, Nov. 6th, 1876.)

XXVI.

CITY ENGINEER'S OFFICE, Toronto, November 13th, 1876.

To His Worship the Mayor and Corporation of the City of Toronto:

GENTLEMEN,—In compliance with certain resolutions passed by your Council at its meeting on the 6th instant, I beg leave to report as follows:—

1st. With regard to the state of repair of the portions of the several streets occupied by the tracks of the Street Railway Company. I have examined them personally with the following results:—

KING STREET.

From Niagara street to the Don I find in pretty fair order, some little filling in next the rails—both inside and out—being required. This is promised to be done without delay; and on the portion wood-paved the necessary repairs, which are not heavy, are now being carried out.

YONGE STREET.

From King street to Bloor street, on this street, as far as Anne street, the railway track has been in very bad repair, in consequence, as is claimed by the Company, of the settlement of the road over the sewer built in 1875 not being complete, and that the City is still liable for the maintenance of the track. The repairs are, however, now being proceeded with; the City furnishing the metal, and the general question of liability remaining in abeyance. I hope in the course of another week that the repairs will be satisfactorily completed. From Anne street north the track is in fair condition, and the Company have promised to do all further necessary repairs at once.

QUEEN STREET.

From Yonge street to the Asylum. The track here is in some places considerably out of repair, requiring lifting and filling in. A good deal has been done in this

direction recently, and the remaining portion will be proceeded with without delay.

SHERBOURNE STREET.

King street to Carlton, and along Carlton street to Parliament. This portion of the Street Railway system is probably in the best repair, taking it altogether, of any. A little filling is required, on the southern end principally, and will be put right in a few days.

FRONT STREET.

From York street to Church street, and along Church street to King street, is in fair order, the worst part being that on Church street, which requires considerable stone filling. A good deal has already been done to this, and I shall see that it is properly completed.

With regard to the powers vested in the City Engineer to compel the company to repair, the amendments to the Act passed last session provide for five days notice being given to the company, after which time, if not complied with, the City Engineer shall have the power to make all necessary repairs, charging the cost of the same to the company, which amounts can be recovered in a court of law.

Respectfully submitted.

F. SHANLY,

City Engineer.

(Appendix No. 292 to Minutes of 1876.)

XXVII.

In Council:—

Ald. Davies, seconded by Ald. Blevins, moves that the Toronto Street Railway Company be requested to place such lights or illuminated names on the cars running on the different routes as will enable citizens and others to distinguish the different cars at night, which was carried.

(Minute No. 1412, Minutes of Council, Nov. 27th, 1876.)

XXVIII.

CITY ENGINEER'S OFFICE, Toronto, 20th Jan., 1877.

To the Council of the Corporation of the City of Toronto:

At the request of the Chairman of the Committee on Legislation I have examined the Act passed at the session of the Parliament of Ontario of 1875-6, 89 Vic., cap. 68, in so far as the same relates to the Toronto Street Railway Company with the

view of reporting upon the relative advantages and disadvantages conferred by that Act upon the City of Toronto as compared with the then existing Acts and By-laws as furnished to me by the City Solicitors, and I have arrived at the following conclusions :

First. The agreement, Act and By-law of 1861 oblige the Street Railway Company to construct and keep in repair the roadway between the tracks, and for one foot and six inches on each side, also to construct and keep in repair the crossings similar to those in use by the City.

Second. The Act of 1875-6 repeals, so far as I can see, the above clause, binding the Street Railway Company merely to repair, and obliging the corporation to construct and renew.

Third. None of the amendments asked for in the municipal instructions of 1875 have been embodied in the Act of 1876 ; and all the advantages enjoyed by the corporation under the former Acts and By-laws have been by the Act of 1876 taken away from it, the only advantage conferred by this Act upon the Corporation being the clause in which it is entitled, after giving *five* days notice, to repair, and charge the cost to the Street Railway Company, such cost to be recoverable in any competent court. This clause originally standing "*reasonable time.*"

Fourth. The first cost of laying down the several pavements or roadways generally in use would be about as follows :

Wood Block, per mile, \$10,000, and its duration about ten years, with an expenditure of \$1,000 for repairs in that time.

Stone Block pavement, per mile, \$20,000, its duration indefinite, but needing an expenditure in ten years of say \$1,000.

Macadamized roadway, per mile, \$6,500, duration indefinite, if kept constantly in repair at a cost of about \$1,000 per mile per annum.

The whole mileage of the Toronto Street Railway Company is about 8 1/8 miles. The above estimates have reference only to the portion of the roadway occupied by and to be constructed by the Street Railway Company under the agreement.

I have also examined the Acts and agreements relating to street railways in Cleveland and Detroit as requested, with the view to shewing the relative advantages enjoyed by street companies in those cities and in Toronto.

First.—In DETROIT.

(1) The Grand Trunk Junction Street Railway Company enjoys a charter for twenty-five years, and pays a license of \$25.00 for each two horse car, and \$12.50 for each one horse car, besides a special tax, and renders an annual statement and account.

(2) The Company to keep the street from curb to curb in good order and repair.

(3) The Company to excavate, grade, pave and re-pave whenever required, and to keep in good order and repair at all times with the same material as used by and

to the satisfaction of the Council, the street between the tracks, and for two feet and nine inches on each side, also to construct and keep in repair all crossings, approaches, etc.

The Central Market cars, Avenue and Third Street Railway, the same as above, except that franchise is for thirty years.

There are three or more companies in Detroit.

Second.—CLEVELAND.

The Street Railway Companies in Cleveland

(1) Pay the original cost of the pavement between the rails at time of laying down their track, which is refunded to the property owners on each side of the street *pro rata*.

(2) After construction of road the companies are bound to keep in repair, to keep clean and to pay costs of watering or sprinkling ten feet of the street, and to construct, re-construct, pave and re-pave, wherever required, the said ten feet, *i.e.*, five feet each way, measuring from the centre of the roadway.

(3) When necessary for the construction of sewers, pavements, gas or waterworks, the track to be taken up and relaid at the expense of the companies.

License, \$20.00 per car per annum.

These ordinances passed in 1863, and two companies were then formed. At that time the population of Cleveland was not much if any larger than that of Toronto now. There are now three or more companies in Cleveland.

I think the foregoing covers all the points upon which information has been called for.

Respectfully submitted,

F. SHANLY,

City Engineer,

(Appendix No. 3, Minutes of Council, 1877.)

XXIX.

In Council :—

Ald. Hallam, seconded by Ald. Ball, moves that whereas, by the second report of the Special Committee on Amendments of the Council of 1875 it was recommended that application should be made to the Legislature of the Province of Ontario for certain amendments to the several Acts relating to the Toronto Street Railway Company, whereby the Corporation of the City of Toronto would acquire a summary method of enforcing the original agreement between the said Street Railway

Company and the said Corporation; and whereas, by the report of the City Engineer it appears that the Act of the said Legislature of 1875 and 1876, 39 Vic., cap. 68., does not confer upon the said corporation any of the powers or privileges recommended as necessary by the report of the said committee, but on the contrary relieves the said Street Railway Company from the performance of several material portions of the said original agreement, to the prejudice of the corporation; and whereas, the Council of 1876 has caused application to be made to the present session of the said Legislature, for the purpose, amongst other things, of repealing the said Act, 39 Vic., cap. 68, in so far as the same relates to the Toronto Street Railway Company; and whereas, it has been represented that the said last mentioned Act was the result of an agreement and compromise between the said Company and this Corporation, Be it therefore resolved, that if any such agreement or consent was made or given, it was wholly unauthorized by this Corporation, and the Committee on Municipal Amendments and Legislation are hereby instructed to use their best endeavors to cause the said Act, 39 Vic., cap. 68, to be repealed, in so far as the same relates to the said Toronto Street Railway Company, and to procure the amendments recommended by the said special committee of 1875; and for the purposes aforesaid to render the City Solicitors all necessary assistance, which was carried.

(Minute No. 92, Minutes of Council, Jan. 22nd, 1877.)

XXX.

In Council :—

Ald. Withrow, seconded by Ald. Hallam, moves that whereas, various propositions were recently made on behalf of this Corporation, and also of the Toronto Street Railway Company, with the view to an amicable arrangement of the differences between the said Corporation and Company, and it was found that the views of each were so far apart from the other that no compromise could be made. And whereas, both parties presented before the Railway Committee of the Legislature their respective claims fully and at great length, and after careful consideration of the matters presented, the Railway Committee reported the Bill originally introduced, with several amendments. And whereas, the said Company has this evening presented to this Council a new proposition, differing from any heretofore presented to this Council, or to any of its Committees: Be it therefore resolved, that this Council is of the opinion that the Toronto Street Railway Bill now before the Legislature in the shape in which it passed the Railway Committee, would be a conclusive settlement of said differences, and that this Council respectfully call on the members for this city in the Ontario Legislature, namely, the Hon. M. C. Cameron and Robert Bell, Esq., to endeavor in every legitimate manner to have the Bill pass the House without amendment, and that a copy of this resolution be forwarded to the members for the City in the Ontario Legislature, and that the 26th and 27th rules of this Council be dispensed with, so far as relates to this motion, which was carried.

(Minute 218, Minutes of the Council, Feb. 12th, 1877.)

XXXI.

In Council :—

Ald. Colwell, seconded by Ald. Close, moved, that the Committee on Legislation have proposed, with the consent of the Citizens Committee, to the Street Railway Company, that in no case where the corporation of the City of Toronto adopts any kind of permanent pavements, shall the Street Railway Company be bound to pay towards the cost of construction of their part of the roadway (being the space between their rails and one foot six inches on the outside of each rail) more than the sum of two dollars and fifty cents per square yard ;

And whereas, the said Committee, with the like consent, have also proposed that the said Toronto Street Railway Company shall have the option of constructing their portion of the roadway where any such permanent pavement is adopted or to request the said Corporation of the City of Toronto to construct the same and collect the cost thereof from the said company by an annual assessment, covering interest and sinking fund on Debentures to be issued to raise the funds for the same, under the provisions of the Municipal Act as for Local Improvements ;

Be it therefore resolved, that the Council of the Corporation of the City of Toronto approve and accept the said proposition, and instruct the said Committee to carry the same into effect, and that the City representatives and City Solicitors be instructed accordingly to stand by the Bill number 53 as reported by the Railway Committee, with the above provisos, and with the further concession that at the expiration of the charter of the said Street Railway Company, if the said corporation shall elect to assume the said railway under the provisions of the agreement and by-law in that behalf, the arbitrators appointed to determine the value of the real and personal property of the said company, shall also estimate as an asset of the said company the value to the said company of any permanent pavements hereafter constructed or paid for by the said company for the balance of the life of the said pavement ; but in such estimate the cost of keeping the same in repair should not be considered, and that the City Solicitors be authorized to frame a clause to carry out the above resolution and insert the same in the Act now before the Ontario Legislature, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute 298, Minutes of Council, Feb. 26th, 1877.)

XXXII.

To the Council of the Corporation of the City of Toronto :

The Committee on Municipal Amendments beg to report as follows :

They herewith submit copies of the several bills introduced under the instructions of your Council as follows :

3. Bill No. 53, An Act respecting the Toronto Street Railway Company. Your

committee beg to report a draft bill in this case, framed with the view to protect the rights of all parties, having regard to the original agreement and a special report is made therewith.

All of which is respectfully submitted.

Committee Room, Toronto, January 29th, 1877.

(Appendix No. 17, Minutes of Council, 1877.)

XXXIII.

To the Council of the Corporation of the City of Toronto :

The Committee on Municipal Amendments beg to report as follows :—

1. Bill No. 58, An Act respecting the Toronto Street Railway Company, has been reported by the Railway Committee with certain amendments, but your Committee do not think that the amendments detract anything from the value of the bill as introduced. This bill has not yet been before the Committee of the whole House, but will probably come up on Wednesday next. As it now stands, the rights of the city are fully protected, and the second sub-section of the first clause of the bill of last year is repealed.

All of which is respectfully submitted.

Committee Room, Toronto, Feb. 5th, 1877.

(Appendix No. 23, Minutes of Council for 1877.)

XXXIV.

To the Council of the Corporation of the City of Toronto :

The Select Committee appointed to consider and report on the communication received from J. Edwards, Esq., Secretary of the Committee of Yonge Street Ratepayers, respecting the improvements on that street, beg to present their Report No. 1.

Your Committee held a meeting on the 5th instant to consider the matter, at which the Citizens Committee of Yonge street were present. A full discussion took place upon the necessity for the adoption of some permanent improvements on Yonge street; and on behalf of the ratepayers on that street the citizens committee stated : That it is their desire to have a permanent roadway laid down this year (provided the connections of the drains, water and gas can be laid and sufficiently

settled), or as soon thereafter as possible, on such terms and in such manner as the Council may determine; and they stated further that the residents on Yonge street would prefer that the Street Railway Company should lay down a double track on that street in preference to a single track with switches.

Your Committee would therefore recommend that the Board of Works be instructed to see that the curbing and catch water basins be proceeded with under the existing contract, and that the City Engineer see that all the connections of gas and sewers are made at the earliest moment, under the provisions of the new law, and that the Mayor be requested to use his influence with the Water Commissioners, with the view that all water main connections be made.

All of which is respectfully submitted,

Toronto, April 9th, 1877.

(Appendix No. 78 to Minutes of Council, 1877.)

In Council :—

The Council resolved itself into Committee of the Whole on the report of the Select Committee appointed to consider the question of proposed improvements on Yonge street, Ald. Cornell in the chair.

The Committee rose. Ald. Cornell reported that the Committee had adopted the report with an amendment, adding the following as an additional clause: "Your committee would also recommend that the Council urge upon the Street Railway Company the necessity of placing a double track on Yonge street."

The report was received.

The amendment was concurred in.

The report, as amended, was adopted.

(Minute No. 507, Minutes of Council, April 16th, 1877.)

XXXV.

To the Council of the Corporation of the City of Toronto :

The Committee on Works beg to present their Report No. 8.

Your Committee having had under consideration a street railway route for the north-western section of the City, have adopted the following as that best calculated to accommodate the residents through which it passes as well as the public generally. It is as follows :

"Commencing at Bathurst street, along College street, Brook street, King street, Simcoe street and Front street to the City Hall."

They would also recommend that the kind of rail used in the original charter be the description to be laid in all extensions of the street railway.

All of which is respectfully submitted,

Office of the Committee of Works, Toronto, July 3rd, 1877.

(Appendix No. 198 to Minutes of the Council for 1877.)

In Council :—

The Council resolved itself into Committee of the Whole on Reports Nos. 3 and 4 of the Committee on Works, Ald. Smith in the chair.

The Committee rose. Ald. Smith reported that the Committee had adopted the reports without amendment.

The report was received.

The reports were adopted.

(Minute No. 889, Minutes of Council, July 5th, 1877.)

XXXVI.

In Council :—

Ald. Blevins, seconded Ald. Small, moves that His Worship the Mayor, and other proper officers in that behalf, do transmit and deliver to the Toronto Street Railway Company a notice in pursuance of section 24 of By-law No. 353, that other parties propose to construct railways on streets in this city not occupied by the said Toronto Street Railway Company, and to whom the privilege of the said section was granted in accordance and compliance with the said section, and that the 26th and 27th rules of this Council be dispensed with, so far as relates to this motion, which was carried.

(Minute No. 1161, Minutes of Council, September 2nd, 1878.)

XXXVII.

In Council :—

Ald. Winchester, seconded by Ald. Denison, moves that the City Engineer be and is hereby authorized to take the necessary steps to compel the Toronto Street Railway Company forthwith to run their line of cars or an omnibus on Queen street west from Manning Avenue to Dundas street, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 1416, Minutes of Council, Dec. 2nd, 1878.)

XXXVIII.

In Council :—

Ald. Hallam, seconded by Ald. Baldwin, moves that the City Engineer, City Commissioner and the City Solicitors be instructed to enforce the law at once affecting the Street Railway Company as far as it relates to the snow on the streets, which was carried.

(Minute No. 86, Minutes of Council, January 30th, 1879.)

XXXIX.

In Council :—

Ald. Searth, seconded by Ald. Small, moves that the City Solicitors be instructed to take immediate measures to prevent the Street Railway Company from carrying in each car more passengers than such car is seated for, which was carried.

(Minute No. 587, Minutes of Council, May 19th, 1879.)

XL.

In Council :—

Ald. Searth, seconded by Ald. Smith, moves that the City Solicitor be instructed to prepare a by-law to be submitted to the Council at its next meeting, compelling the Toronto Street Railway Company to carry in their cars only the number of passengers such cars are seated for, and that the 26th and 27th rules of this Council be dispensed with, so far as relates to this motion, which was carried.

(Minute No. 819, Minutes of Council, August 11th, 1879.)

XLI.

In Council :—

Ald. Baxter, seconded by Ald. Blevins, moves that the Toronto Street Railway Company be permitted to extend their line of railway to a point as far west on King street as where that street is intersected by the Grand Trunk, Northern, and the Toronto, Grey & Bruce Railways, and to run their cars to that point on King street during the approaching Exhibition, they agreeing to charge but one fare of five cents to passengers travelling on King street during the time that the Exhibition shall be kept open; and after the close of the Exhibition the fare on that road is to be settled by the Company and the Council.

Ald. Winchester, seconded by Ald. Fleming, in amendment moves that the words "and Queen street" be inserted after the words "King street" wherever the same occurs in the foregoing motion, which was carried.

Upon the question that the original resolution as amended be adopted, it was carried.

(Minute No. 917, Minutes of Council, August 11th, 1879.)

XLII.

Report No. 20 of the Committee on Works.

Your Committee beg to recommend that the City Engineer be instructed to notify the Toronto Street Railway Company to extend their track westward on King and Queen streets to the Exhibition Grounds.

Committee Room, Toronto June 8rd, 1879.

(Appendix No. 452, Appendix to Minutes of Council, 1879.)

(The foregoing was adopted in Council by Minute 668, Minutes of Council, June 16th, 1879.)

XLIII.

Report No. 25 of the Committee on Works.

The Committee on Works beg to recommend that the City Engineer be instructed to notify the Toronto Street Railway Company to extend their track on Strachan Avenue, from King Street to the railway crossings.

Committee Room, Toronto, August 11th 1879.

(Appendix No. 594 to Minutes of Council, 1879.)

Report adopted in Council, (Minute 888, August 26th, 1879.)

XLIV.

In Council:—

Ald. Lobb, seconded by Ald. Adamson, moves that in view of the constantly increasing requirements of the east end of the city, the Street Railway Company be requested to extend their line from Sherbourne street by Queen to Parliament, up Parliament to Gerrard, thence to River street, as calculated to afford more easy means of access to other parts of the city; and also that they be further requested to extend their line from Parliament along Winchester as far as compatible with their existing general arrangements as to time, which was carried.

(Minute No. 698, Minutes of Council, June 22nd, 1880.)

XLV.

In Council :—

Ald. Walker, seconded by Ald. McMurray, moves that notice be given to the Toronto Street Railway Company, under the seal of the Corporation of the City of Toronto, requiring them to complete their line of street railway from York street along Front to Simcoe street, and along Simcoe street to King street, in accordance with the terms of the original agreement to construct the line from the Union Station along Simcoe street to King street, and thence to Brook street, and along Brook Street and Spadina avenue to College street, thence to Bathurst street, which was carried.

(Minute No. 733, Minutes of Council, June 28th, 1880.)

XLVI.

Report No. 35 of the Committee on Works.

The Committee on Works beg to report the receipt of a petition from Angus Morrison, Esq., and others, praying that the street railway track on Front street be extended to Bathurst street, and beg to recommend that it be constructed, and that the City Solicitor give the Toronto Street Railway Company the proper notice required by statute.

Committee Room, Toronto, November 2nd, 1880.

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 42 of the Executive Committee, Ald. Baldwin in the chair.

The Committee rose. Ald. Baldwin reported that the Committee had adopted the report with an amendment striking out the clauses in the report by the Executive Committee referring to the exemption from taxation of the property of the Dominion Bolt Company for the purpose of referring the matter back to the Committee for further consideration.

The report was received.

The amendment was concurred in.

The report as amended was adopted.

(Minute 1186, Minutes of Council, Nov. 8th, 1880.)

XLVII.

In Council :—

Ald Carlyle, seconded by Ald. Fleming, moves that the City Solicitor be instructed to report at the next meeting of this Council what has been done with reference to the action taken by the Gas and Street Railway Companies to resist the collection of taxes on the assessment made on them for 1879, which was carried.

(Minute No. 288, Minutes of Council, February 24th, 1881.)

XLVIII.

In Council :—

The following communications were read.

From the City Solicitor, respecting the assessment and taxation of the mains and tracks of the Gas and Street Railway Companies.

(Minute No. 327, Minutes of Council, March 7th, 1881.)

XLIX.

In Council :—

His Worship the Mayor also stated that, acting on the advice of the City Solicitor, he had instructed him to file a Bill in Chancery to restrain the Toronto Street Railway Company from breaking up the streets of the City without the previous consent of the Council.

(Minute No. 400, Minutes of Council, March 24th, 1881.)

L.

In Council :—

Ald. Boustead, seconded by Ald. Hallam, moves that the action of His Worship the Mayor in applying for an injunction to restrain the Toronto Street Railway Company from breaking up Church street and constructing a railway thereon be and is hereby approved of, and that the suit be continued, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 428, Minutes of Council, March 24th, 1881.)

LI.

In Council :—

Ald. Lobb, seconded by Ald. Taylor, moves that in view of the fact of a notice having been given to the Toronto Street Railway Company on the 22nd June, 1880, to extend their tracks from Sherbourne street along Queen street and up Parliament street to Gerrard street, thence to River street, and from Parliament down Winchester to Sumach street, and that the above notice was duly acknowledged by the said Toronto Street Railway Company on the 5th July, 1880, that it be an instruction to the Committee on Works to have the resolution of the Council carried out by the immediate prosecution of the work, and that the 26th and 27th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No 568, Minutes of Council, May 2nd, 1881.)

LII.

In Council :—

Ald. Kent, seconded by Ald. Boustead, moves that the Toronto Street Railway Company be requested to have placed on each side of each car, in as conspicuous a manner as possible, the names of the several streets forming routes traversed by the aforementioned railway, which was carried.

(Minute No. 607, Minutes of Council, May 12th, 1881.)

LIII.

In Council :—

Ald. Hallam, seconded by Ald. Love, moves that whereas it is desirable to have transfer tickets on any two routes on the Toronto Street Railway Company, and that such transfer tickets be not more than two cents, be it resolved that this Council open negotiations through the City Solicitor with the Toronto Street Railway Company to effect this arrangement within one month from the 1st October, which was carried.

(Minute No. 1058, Minutes of Council, October 10th, 1881.)

LIV.

In Council :—

Ald. Kent, seconded by Ald. Baxter, moves that the Toronto Street Railway Company be communicated with by the City Clerk, asking the names of the streets

traversed and forming the different routes throughout the City, which was carried.

(Minute No. 1261, Minutes of Council, December 27th, 1881.)

LV.

Report No. 4 of the Committee on Works.

Your Committee have further considered the petition of the Metropolitan Street Railway Company and the Engineer's report thereon, and beg to recommend that the following route be constructed, and also that the City Solicitor be instructed to give the Toronto Street Railway Company the necessary notice:

Commencing at the intersection of Bathurst street and Wellington avenue; thence along Wellington avenue to Strachan avenue, along Strachan avenue to Exhibition road, and along Exhibition road to a jog in that road east of the gates of the grounds.

Your Committee further recommend that the Toronto Street Railway Company be notified to extend their line on College street from Bathurst street to Hope street.

Committee Room, Toronto, February 17th, 1881.

(Appendix 79 and 80 to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into Committee of the Whole on Reports Nos. 4 and 5 of the Executive Committee, Ald. Davies in the chair.

The Committee rose. Ald. Davies reported that the Committee had adopted report No. 18 with an amendment, striking out report No. 4 of the Committee on Works respecting the construction of a street railway on Wellington and Strachan avenues and inserting the following in lieu thereof:—"Commencing at Wellington avenue on Strachan avenue, thence along Strachan avenue to Exhibition road, and along Exhibition road to a jog in that road east of the gates to the grounds."

The Report was received.

The amendment to Report No. 4 of the Committee on Works was concurred in.

Report No. 4 as amended was adopted.

Minute No. 256, Minutes of Council, Feb. 21st, 1881.)

LVI.

Report No. 9 of the Committee on Works.

The Committee on Works beg to report that they have received a petition praying that the street railway be extended on Dundas street, from Queen street to Dufferin street, and the City Engineer having reported favorably thereon, your Committee recommend that the same be constructed, and that the City Solicitor be instructed to give the Toronto Street Railway Company the necessary legal notice.

Committee Rooms, Toronto, March 2nd, 1881.

(Appendix 122 to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 7 of the Executive Committee, Ald. Irwin in the chair.

The Committee rose. Ald. Irwin reported that the Committee had adopted the Report without amendment.

The Report was received.

The Report was adopted.

(Minute No. 353, Minutes of Council, March 7th, 1881.)

LVII.

Report No. 9 of the Committee on Works.

The following communication from the Toronto Street Railway Company is submitted for the consideration of the Council :

" OFFICE OF THE TORONTO STREET RAILWAY COMPANY,
Corner King and Church streets,
Toronto, 14th March, 1881.

R. J. Brough, Esq., City Engineer, Toronto :

You are hereby notified that it is the intention of the Toronto Street Railway Company to commence the construction of a street railway at the expiration of ten days after the delivery of this notice on the following streets :

From Bloor street, along Church to Queen street, thence to Jarvis street, down Jarvis to Adelaide street, thence to the City Hall, commencing at Bloor street.

Also Church street from Queen street to King street, commencing at Queen street.

Also from Church street along Carlton to Sherbourne street, commencing at Church street.

FRANK SMITH,
President.

JAMES GUNN,
Secretary."

Committee Room, Toronto, March 15th, 1881.

(Appendix 169 to Minutes of Council, 1881.)

LVIII.

To the Council of the Corporation of the City of Toronto :

The Committee on Works beg to submit their Report No. 18 :

The Committee on Works beg to report that they have received a communication from the Honorable Frank Smith, President of the Toronto Street Railway Company, asking permission to extend their lines so as to connect with their stables on Front street east.

Your Committee have carefully considered the same, and beg to recommend that permission be granted to construct a line on Frederick street, from King to Front street, thence along Front street to the stables ; and that the City Solicitor be instructed to give them the necessary notice.

Committee Room, Toronto, 19th April, 1881.

(Appendix 289 to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 18 of the Committee on Works, Ald. Ball in the chair.

The Committee rose. Ald. Ball reported that the committee had adopted the report without amendment.

The Report was received.

The Report was adopted.

(Minute No. 521, Minutes of Council, 1881.)

LIX.

Report No. 15 of the Committee on Works.

A petition has been received from the Toronto Street Railway Company asking permission to extend their lines so as to make connection with their car sheds on Front street east, and it is recommended that they be permitted to lay a single line on Front street, from the intersection of Church street along Front street to the sheds.

Committee Room, Toronto, April 26th, 1881.

(Appendix 831 to Minutes of 1881.)

LX.

To the Council of the Corporation of the City of Toronto :

The Executive Committee beg to submit their Report No. 16 :

Your Committee have had before them the following reports of committees, and submit the same for the consideration of the Council, subject to the exceptions taken :

Report No. 15, of the Committee on Works and Accounts and Recommendations embodied therein.

Your committee recommend that the clause of the above report recommending that the Toronto Street Railway Company be permitted to lay their track on Front street, from Church street to their car sheds on Front street east, be re-committed, with a view of ascertaining whether George street would be as acceptable for the purposes of the company as Front street.

Committee Room, Toronto, April 28th, 1881.

(Appendix 839 to Minutes of Council, 1881.)

The Council resolved itself into Committee of the Whole on Report No. 16 of the Executive Committee, Ald. Bell in the chair.

The Committee rose. Ald. Bell reported that the Committee had adopted the report with amendments striking out the clause in the report of the Executive Committee, referring to the laying of a street railway track on George street ; and adding to the end of the clause in Report No. 15 of the Committee on Works, re-

commending that the Street Railway Company be allowed to construct a track on Front street, from Church street to the company's stables, the words, "subject to such special restrictions as will be imposed upon the company by the Committee on Works."

The report was received.

The amendments were concurred in.

Upon the question that the report as amended be adopted, it was carried.

(Minute No. 550, Minutes of Council, May 22nd, 1881.)

LXI.

To the Council of the Corporation of the City of Toronto :

The Committee on Works beg to submit their report No. 22 :

Your Committee beg to recommend that the following extensions be made to the Toronto Street Railway system, and that the City Solicitor be instructed to give the Toronto Street Railway Company the necessary legal notice required by statute :

1st. On Church street, from Bloor to King street.

2nd. On Wilton avenue, from Sherbourne to Parliament street; thence along Parliament to Gerrard street; thence along Gerrard street to River street.

3rd. On Winchester Street, from Parliament to Sumach street.

4th. On Front street, from York to Simcoe street; thence along Simcoe to Queen street, and along the existing lines on Queen street to William street; thence along William street to Caer Howell street, and along Caer Howell street to McCaul street; thence along McCaul to College street.

5th. On Spadina avenue, from College to Bloor street.

6th. On Bathurst street, from King to Bloor street.

7th. On Dundas street, from Queen to Dufferin street.

8th. On Strachan avenue and Exhibition road, from the railway crossings to Exhibition gates, the railway to be laid on the south side of the Exhibition road.

Your Committee, in recommending the extension of the above routes, beg to submit the following extract from a communication received from the President of the Toronto Street Railway Company :

"With reference to the laying of the Church street track, should the necessary permission be given to proceed immediately with the construction of the track on this street, we are willing in this instance to obviate the suggested difficulty with regard to future reconstruction of the Church street sewer by undertaking the sole expense of relaying the track upon Church street, should such relaying be rendered necessary by the reconstruction of the sewer, which your Committee contemplates.

"With regard to the issue of transfer tickets, I am prepared on behalf of the Company to say that such tickets, good for any two routes, will be issued at a rate not to exceed eight cents each, as soon as the necessary arrangements can be made, say within one month."

Committee Room, Toronto, May 30th, 1881.

(Appendix 466 to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 22 of the Committee on Works—Ald. Love in the chair.

The Committee rose, Ald. Love reported progress, and asked leave to sit again.

The report was received and leave granted accordingly.

Ald. Baxter, seconded by Ald. Jobb, moves that the Council do again forthwith resolve itself into Committee of the Whole on Report No. 22 of the committee on works, upon which the yeas and nays were taken as follows :

YEAS—Messrs. Baxter, Bell, Crocker, Davies, Farley, Irwin, Lobb and Walker—8.

NAYS—Messrs. Ball, Boswell, Boustead, Carlyle, Clarke, Denison, Evans, Fleming, Lake, Love, Mitchell, Ryan, Steiner, Taylor and Trees—15.

Decided in the negative by a majority of 7.

(Minute No. 689, Minutes of Council, May 30th, 1881.)

LXII.

Ald. Denison, seconded by Ald. Farley, moves that prior to the passing of Report No. 22 of the Committee on Works the City Solicitor be instructed to give his opinion in writing as to whether conditions can in any case be imposed upon the Toronto Street Railway Company where new lines are to be laid, and that the 33rd and 35th Rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 691, Minutes of Council, May 30th, 1881.)

LXIII.

At the meeting of Council, June 6th, 1881, the following communications were read :

From the City Solicitor, giving an opinion as to the power of the Council to impose new conditions upon the Toronto Street Railway Company, where new lines are to be laid down.

(Minute No. 709, Minutes of Council, June 6th, 1881.)

LXIV.

In Council :—

Ald. Lobb rose to a question of order, for the purpose of obtaining the ruling of the presiding officer as to whether the clause in the Report No. 22 of the Committee on Works, with reference to the extension of the street railway along Wilton avenue, Parliament, Gerrard and Winchester streets is in order, in view of the previous action of the Council in the matter.

The presiding officer ruled the clause in the report out of order inasmuch as the Council, by resolution passed on the 2nd of May last have already decided upon the routes for the extension of the street railway in the north eastern portion of the city.

The ruling of the Chair was appealed from.

Upon the question that the ruling of the Chair be sustained, the yeas and nays were taken as follows:

YEAS—Messrs. Bell, Boswell, Boustead, Crockier, Davies, Fleming, Kent, Lake, Lobb, Love and Ryan—11.

NAYS—Messrs. Adamson, Blevins, Carlyle, Clarke, Steiner and Walker—6.

Carried in the affirmative by a majority of 5.

The Council resumed Committee of the Whole on report No. 22 of the Committee on works, Ald. Love in the chair.

The Committee rose. Ald. Love reported progress, and asked leave to sit again.

The report was received and leave granted accordingly.

(Minute No. 734, Minutes of Council, June 13th, 1881.)

The Council resumed Committee of the Whole on report No. 22 of the Committee on works, Ald. Love in the chair.

The Committee rose. Ald. Love reported that the hour of 11 o'clock had arrived.

The report was received.

The Council adjourned.

(Minute No. 737, Minutes of Council, June 13th, 1881.)

LXV.

Ald. Barter, seconded by Ald. Farley, moves that the Council resume Committee of the Whole on report No. 22 of the Committee on Works.

Ald. Hallam, seconded by Ald. Carlyle, in amendment moves that this Council do now adjourn, which was lost.

Upon the question that the resolution of Ald. Baxter be adopted, it was carried.

The Council resumed Committee of the Whole on report No. 23 of the Committee on Works, Ald. Baxter in the chair.

The Committee rose. Ald. Baxter reported no quorum.

The Council adjourned for want of a quorum.

LXVI.

The Council resumed Committee of the Whole on report No. 22 of the Committee on Works, Ald. Love in the chair.

The Committee rose. Ald. Love reported that the Committee had adopted the report with amendments, striking out the clause providing for the construction of a street railway on Church street, with a view to the same being referred back to the Committee on Works for further consideration; striking out the second and third clauses of the report referring to the construction of a railway on Wilton Avenue, Parliament, Gerrard and Winchester streets; striking out the words "thence along Simcoe to Queen street" in the fourth clause; and striking out the whole of the other portion of the same clause with a view to the same being referred back to the Committee on Works for reconsideration, and for the purpose of considering the question of connecting the railway stations and the Queen's Park by street railway; and inserting the following as an additional clause: "That the Street Railway Company be called upon to construct a railway from the junction of King and Queen streets westward from the said place along Queen street to the intersection of Queen and Yonge streets; and in the event of a street railway being constructed on Queen street, east of Parliament street, and the city constructing a sewer on that street afterwards, the Street Railway Company be required to take up the ties, rails and track, and relay the same at the expense of the Company after the construction of such sewer."

The report was received.

Upon the question that the report as amended be adopted,

Ald. Steiner, seconded by Ald. Carlyle, in amendment moves that the report as amended be not now adopted, but that it be referred back to the Committee on Works, with a request that they will negotiate with the Company with a view of procuring a new agreement with the company, in which it shall be stipulated that the clause in their charter binding the City to purchase the assets of the Company at an arbitration valuation, shall not apply to the new assets to be created by the laying of the new lines of rails, nor to any plant or rolling stock which the Company may acquire by reason of the new extensions, and in which it shall also be stipulated that the Company shall also pay taxes on such new rails, plant and rolling stock, and increased license fees on such new rolling stock, the amount thereof to be hereafter determined by this Council, upon which the yeas and nays were taken as follows:

YEAS—Messrs. Adamson, Carlyle, Clarke, Love and Steiner—5.

NAYS—Messrs. Baxter, Bell, Blevins, Boustead, Crocker, Evans, Fleming, Kent, Lake, Lobb, Ryan and Walker—12.

Decided in the negative by a majority of 7.

Upon the question that the report as amended be adopted,

Ald. Walker, seconded by Ald. Ryan, in amendment moves that the report as amended be not now adopted, but that it be further amended by striking out the amendments to the fourth clause, respecting the construction of a street railway on Front, Simcoe, William, Caer Howell, and McCaul streets, and that the clause, as originally reported, be referred back to the Committee on Works for reconsideration, which was carried.

Upon the question that the report as amended be adopted,

Ald. Baxter, seconded by Ald. Lobb, in amendment moves that the report as amended be not now adopted, but that the clause struck out in Committee of the Whole, respecting the construction of a street railway on Church street, be reinserted, upon which the yeas and nays were taken as follows :

YEAS—Messrs. Adamson, Baxter, Bell, Blevins, Crocker, Fleming, Kent, Lobb, Ryan and Walker—10.

NAYS—Messrs. Boustead, Carlyle, Clarke, Evans, Lake, Love and Steiner—7.
Carried on the affirmative by a majority of 3.

Upon the question that the report as amended be adopted,

Ald. Clarke, seconded by Ald. Steiner, in amendment moves that the report as amended be not now adopted, but that it be further amended by striking out the words "the necessary legal notice required by statute," in the first clause, and, inserting the following in lieu thereof : "notice that the corporation is prepared to enter into an agreement for the construction of the street railways here recommended, on such terms and conditions as may be agreed upon between the company and the City Engineer, and approved of by this Council," upon which the yeas and nays were taken as follows :

YEAS—Messrs. Carlyle, Clarke, Love and Steiner—4.

NAYS—Messrs. Adamson, Baxter, Bell, Blevins, Boustead, Crocker, Evans, Fleming, Kent, Lake, Lobb, Ryan and Walker—13.

Decided in the negative by a majority of 9.

Upon the question that the report as amended be adopted,

Ald. Blevins, seconded by Ald. Adamson, in amendment moves that the report as amended be not now adopted, but that it be further amended by striking out the amendment inserted in Committee of the Whole respecting the construction of a street railway on Queen street east, with a view to the same being referred to the Committee on Works for its consideration and report thereon, upon which the yeas and nays were taken as follows :

YEs—Messrs. Adamson, Blevins, Carlyle, Clarke, Lake, Love, Steiner and Walker—8.

NAYs—Messrs. Baxter, Ball, Boustead, Crocker, Evans, Fleming, Kent, Lobb and Ryan—9.

Decided in the negative by a majority of 1.

Upon the question that the report as amended be adopted, it was carried.

(Minute No. 816, Minutes of Council, July 8th, 1881.)

LXVII.

Report No. 80 of the Committee on Works.

The Committee on Works beg to recommend that the rail (*specimen laid on the table*) be adopted, and be laid on all roads to be hereafter occupied by the Toronto Street Railway Company until otherwise ordered, and henceforth no rail not in accordance with this pattern shall be allowed by the proper officers of the corporation to be laid on any street.

Committee Room, Toronto, August 3rd, 1881.

(Appendix 652, to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into committee of the whole on Report No. 29 of the Executive Committee, Ald. Crocker in the chair.

The Committee rose. Ald. Crocker reported that the Committee had adopted the report without amendment.

The report was received.

Upon the question that the report be adopted it was carried.

(Minute No. 910, Minutes of Council, August 22nd, 1881.)

LXVIII.

Report No. 34 of the Committee on Works.

The Committee on Works beg to recommend that the following extensions be made to the Toronto Street Railway system, and that the City Solicitor be instructed to give the Toronto Street Railway Company the necessary legal notice, the rail to be used on this route to be the same as recommended in Report No. 80 of the Committee on Works :

Commencing at the intersection of York and Front streets, thence northerly along York to Queen, thence along Queen to William, thence up William to Caer Howell, and along Caer Howell to McCaul, thence north along McCaul to College, and along College to Spadina Avenue, thence along Spadina Avenue to Bloor street.

Committee Room, Toronto, Sept. 21st, 1881.

(Appendix 736 to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into a Committee of the Whole on Reports Nos. 84, 85, and 86 of the Executive Committee, Ald. Crocker in the chair.

The Committee rose. The Mayor having arrived took the chair. Ald. Crocker reported that the committee had adopted the Report No. 84 with amendments, striking out that portion of the second clause of Report No. 84 of the Committee on Works with respect to the construction of a street railway on York street, with a view to the same being referred back to the Committee for further consideration.

The report was received.

Upon the question that Report No. 84 as amended be adopted,

Ald. Baxter, seconded by Ald. Clarke, in amendment moves that the report as amended be not now adopted, but that the clause in Report No. 84 of the Committee on Works, respecting street railway extension, struck out in Committee of the Whole, be re-inserted, upon which the yeas and nays were taken as follows:

YEAS—Messrs. Adamson, Baxter, Blevins, Boswell, Clarke, Crocker, Denison, Evans, Irwin, Kent and Lobb—11.

NAYS—Messrs. Ball, Boustead, Carlyle, Davies, Farley, Fleming, Hallam, Love, Mitchell, Steiner, Taylor and Trees—12.

Decided in the negative by a majority of 1.

Upon the question that Report No. 84 as amended be adopted, it was carried.

(Minute No., 994, Minutes of Council, September 27th, 1881.)

LXIX.

Report No. 35 of the Committee on Works.

The Committee on Works again recommended that the Toronto Street Railway system be extended by adopting the route as contained in the 34th report of your committee, viz.: commencing at the intersection of York and Front street, thence northerly along York to Queen, thence along Queen to William, thence up William

to Caer Howell, and along Caer Howell to McCaul, thence north along McCaul to College, and along College to Spadina avenue, thence along Spadina avenue to Bloor street.

Committee Room, Toronto, September 29th, 1881.

(Appendix 776 to Minutes of Council, 1881.)

LXX.

Report No. 36 of the Committee on Works.

The Committee on Works, since the consideration of their last report, have received a petition against the construction of a street railway on Caer Howell street, and beg to submit the following information for the consideration of the Council, and ask that it be taken up in connection with Report No. 35:

There are ten owners of property on both sides of Caer Howell street, from McCaul street to William street, their aggregate assessments being \$15,255. Of these, five representing an assessment of \$7,010, petition against the construction of the railway.

There are also five tenants within the above distance, and four of these have petitioned against its construction.

Your Committee submit a plan showing the above respective positions of the properties on Caer Howell street, within the above limits, their frontages and assessed values, as taken from the last (1882) assessment roll.

Committee Room, Toronto, October 4th, 1881.

(Appendix 784 to Minutes of Council, 1881.)

In Council :—

The Council resolved itself into a committee of the whole on Report No. 39 of the Executive Committee, Ald. Baxter in the chair.

The committee rose. Ald. Baxter reported progress and asked leave to sit again for the purpose of obtaining the ruling of His Worship the Mayor as to whether an amendment by Ald. Steiner referring back to the Committee on Works the clause in the Report No. 35 of that committee, respecting the extension of the street railway in the north-western part of the City, with instructions to negotiate with the Street Railway Company with the view to an amendment of their charter in respect to the purchase by the City in 1891 of the assets of the company, the assessment of the company for a share of the cost of block pavement on certain streets traversed by their cars, and other matters, was in order.

The report was received and leave granted accordingly.

His Worship the Mayor ruled that the amendment was not in order.

The Council resumed Committee of the Whole on the report. Ald. Baxter in the chair.

The Committee rose. Ald. Baxter reported that the Committee had adopted the report with amendments, inserting after the words, "commencing at" in the third line of the first clause of Report No. 35 of the Committee on Works, respecting the extension of the street railway, the words; "the City Hall along Front street to," inserting the following as the second clause of the report: "Before any street is broken upon by the Street Railway Company whereon to lay a street railway, the City Engineer or other proper officer of the City do furnish to the Street Railway Company the proper levels of the street, which levels must be by the said company strictly adhered to, and the work of construction of the street railways through the streets is to be carried on by the company subject to the order and in obedience to the said Engineer or other proper officer; and before any section of a street is broken up for the purpose of laying tracks a specific time shall be agreed upon between the City Engineer and Street Railway Company for such section to be opened up and completed."

The report was received.

The amendments were concurred in.

Upon the question that the report be adopted, Ald. Carlyle, seconded by Ald. Fleming, in amendment moves that the report as amended be not now adopted, but that it be further amended by striking out the words "York street" wherever they occur in the first clause of Report No. 35 of the Committee on Works, respecting the extension of the street railway, and inserting the words "Simcoe street" in lieu thereof, upon which the yeas and nays were taken as follows:

YEAS—Messrs. Carlyle, Fleming, Love, Steiner and Taylor—5.

NAYS—Messrs. Adamson, Baxter, Blevins, Clarke, Crocker, Davies, Denison, Evans, Irwin, Kent, Ryan and Trees—12.

Decided in the negative by a majority of 7.

Upon the question that the report as amended be adopted.

Ald. Farley, seconded by Ald. Hallam, in amendment moves that the report as amended be not now adopted, but that it be further amended by striking out the words "York street" in the fourth line of the first clause of Report No. 35 of the Committee on Works, respecting the extension of the street railway, upon which the yeas and nays were taken as follows:

YEAS—Messrs. Adamson, Bell, Carlyle, Crocker, Davies, Farley, Fleming, Hallam, Love, Steiner and Trees—11.

NAYS—Messrs. Baxter, Clarke, Denison, Evans, Irwin and Ryan—6.

Carried in the affirmative by a majority of 5.

Upon the question that the report as amended be adopted it was carried.

(Minute No. 1041, Minutes of Council, October 10th, 1881.)

LXXI.

Ald. Evans, seconded by Ald. Denison, moves that whereas it has been ascertained that Renfrew street is about to be opened up northerly to meet McCaul street, with which it will form a line of street running direct from Queen street to College street, and whereas, the first clause of the 35th Report of the Committee on Works, which was amended in committee of the whole on the 10th day of October last, was so modified in Council as to deprive the north-western part of the city of the street car accommodation which was expected to result from it, if not to leave the route practically undetermined: Be it therefore resolved, that the Committee on Works be requested to reconsider the question of street car extension to the north-west of the City, with the view of recommending a route which will at once furnish the desired accommodation to the public, and at the same time avoid the danger and inconvenience which are feared if a line should be carried through such a narrow thoroughfare as Caer Howell street, which was carried.

(Minute No. 1171, Minutes of Council, Nov. 28th, 1881.)

LXXII.

Report No. 48 of the Committee on Works.

Your Committee have had before them the resolution passed by the Council on the 28th instant, requesting them "to reconsider the question of street car accommodation to the north-west of the city with a view of recommending a route which will at once furnish the desired accommodation to the public, and at the same time avoid the danger and inconvenience which are feared if a line should be carried through such a narrow street as Caer Howell street."

After fully considering this question, and in view of the difficulty in securing an entirely new route from the City Hall to the north-western portion of the City that will be satisfactory to the public generally, your committee have decided to recommend the Council to postpone any action in the matter until next year.

Committee Room, Toronto, November 30th, 1881.

(App. No. 915, Minutes of Council, 1881.)

In Council:—

The Council resolved itself into Committee of the Whole on Report No. 47 of the Executive Committee. Ald. Ryan in the chair.

The Committee rose. Ald. Ryan reported the Committee had adopted the report with amendments. (*None relating to street railway.—ED.*)

The report was received.

The amendments were concurred in.

Upon the question that the report as amended be adopted, it was carried.

(Minutes of Council, Minute No. 1196, Dec. 5th, 1881.)

LXXIII.

Report No. 17 of the Committee on Works.

Your Committee beg to recommend that the City Solicitor be instructed to give the Street Railway Company the necessary legal notice to construct lines of railway on the following streets, viz.:

1st. Spadina avenue, to connect the line already existing, thence northerly to Bloor street.

2nd. College street, from Clinton to McCaul street; thence along McCaul and Renfrew street to Queen Street; thence along Queen to Simcoe, and down Simcoe to Front street, to connect with the lines on that street.

Committee Room, Toronto, May 2nd, 1882.

(Appendix 898, Minutes of Council, 1882.)

The Council resolved itself into Committee of the Whole on Report No. 19 of the Executive Committee, Ald. Irwin in the chair.

The Committee rose. Ald. Irwin reported that the Committee had adopted the report without amendment.

The report was received.

The report was adopted.

(Minute 498, Minutes of Council, May 8th, 1882.)

LXXIV.

Ald. Farley, seconded by Ald. Boswell, moves that the clause in Report No. 17 of the Committee on Works, providing for the construction of a line of street railway on Simcoe street, south of Queen street, as adopted by the Council on Monday evening last, be reconsidered, with a view of referring the same back to the Committee on Works, for the purpose of considering the advisability of substituting some other street for Simcoe street, and that the carrying out of the said portion of the above mentioned report be deferred until a further report is received from the Committee on Works, and that the 33rd and 35th rules of this Council be dispensed with so far as relates to this motion, which was carried.

(Minute No. 536, Minutes of Council, May 15th, 1882.)

LXXV.

Report No. 20 of the Committee on Works.

In compliance with the resolution of Council, passed on the 15th instant, your Committee have again had before them the question of laying a line of street

railway on Simcoe street, south of Queen street. After a full reconsideration of the whole matter, the Committee are of opinion that Simcoe and York streets are the only ones on which the line could be constructed to meet the requirements of the citizens for whose convenience and benefit the route is intended. As there is a block pavement on York street, which would have to be torn up were a line of railway laid down, and in view of the difficulty in securing another suitable and convenient cabstand, your Committee beg to again recommend that the line be constructed on Simcoe street, from Queen street to connect with the Front street lines.

(Appendix 457, Minutes of Council, 1882.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 22 by the Executive Committee, Ald. Boustead in the chair.

The Committee rose. Ald. Boustead reported that the committee had adopted the report with the following amendments : striking out all after the word "intended" in the seventh line of the clause in Report No. 20 of the Committee on Works, respecting the laying of a line of street railway on Simcoe street, and inserting the following in lieu thereof :—"As the property owners on Simcoe street object to the construction of a line on that street, while it is represented that the owners of property on York street are in favour of the line, or have no such objections, your committee recommended that the line be constructed on York street."

The report was received.

The amendments were concurred in.

Upon the question that the report as amended be adopted, it was carried.

LXXVI.

Report No. 25 of the Committee on Works.

Your Committee beg to recommend that the usual notice be given to the Toronto Street Railway Company, requesting them to extend their line of railway easterly on Winchester street to Sumach street.

Committee Room, Toronto, July 18th, 1882.

(Appendix 25, Minutes of Council, 1882.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 29 of the Executive Committee, Ald. Love in the chair.

The Committee rose. Ald. Love reported that the Committee had adopted the report with amendments.

The report was received.

The amendments were concurred in.

Upon the question that the report as amended be adopted, it was carried.

(Minute No. 701, Minutes of Council, July 24th, 1882.)

LXXVII.

In Council :—

Ald. Defoe, seconded by Ald. Boswell, moves that in the opinion of this Council it is advisable in the public interest, before a permanent roadway is laid down on King street, that one track of the street railway be taken off that street, and be placed on Adelaide street, between Bathurst in the west and Jarvis street in the east and that Bathurst street, between King and Adelaide streets, be used for making a circuitous route; and that His Worship the Mayor, the Chairman of the Committee on Works, the Chairman of the Committee on Markets and Health, and the mover and seconder of this resolution, be a Select Committee to confer with the Street Railway Company on the subject, with instructions to report to this Council, which was carried.

(Minute No. 754, Minutes of Council, August 7th, 1882.)

LXXVIII.

In Council :—

Ald. Low, seconded by Ald. Downey, moves that the City Engineer be and is hereby instructed to order the Street Railway Company to continue steadily and without intermission the construction of the north-west route of railway, along York, Queen, McCaul and College streets, and that the 33rd and 35th rules of this Council be dispensed with so far as relates to the same, which was carried.

(Minute No. 792, Minutes of Council, Sept. 4th, 1882.)

LXXIX.

In Council :—

Oct. 30th, 1882, the following communications were read :

From the City Solicitor respecting the liability of the Street Railway Company to provide all their cars with conductors as well as drivers.

(Minute No. 913, Minutes of Council, October 30th, 1882.)

LXXX.

In Council :—

Ald. Low gives notice that he will on to-morrow move that the Street Railway Company be required to place conductors on all their cars.

(Minute 933, Minutes of Council, October 30th, 1882.)

LXXXI.

Ald. Turner, seconded by Ald. Adamson, moves for leave to bring in a Bill respecting street railways, which was carried.

The bill was read a first time.

Upon the question that the bill be read a second time to-morrow, Ald. Turner, seconded by Ald. Adamson, in amendment moves that the bill be read a second time forthwith, that the 58th rule of the Council be dispensed with so far as relates to the same, which was carried.

The bill was read a second time.

(Minute No. 989, Minutes of Council, Nov. 18th, 1882.)

In Council :—

The Council resolved itself into committee of the whole on the Bill respecting Street Railways, Ald. Ryan in the chair.

The Committee rose. Ald. Ryan reported that the Committee had adopted the bill without amendment.

The report was received.

Upon the question that the bill be engrossed and read a third time, it was carried.

The bill was read a third time and passed.

Ald. Turner, seconded by Ald. Hallam, moves that the bill be entitled "No. 1264, a By-law respecting Street Railways," which was carried. (See Appendix No 295.)

The By-law is as follows :

No. 1264. A BY-LAW

Respecting Street Railways.

[Passed December 18th, 1882.]

WHEREAS, it is expedient to make further provision for the protection of the citizens of Toronto, and prevent accidents resulting from the use of Street Railway cars without conductors ;

Therefore the Council of the Corporation of the City of Toronto enacts as follows :

I.

From and after the passing of this By-law every Street Railway car in use on the several lines of Street Railway, in the City of Toronto, shall be provided and furnished not only with a driver, but also with a conductor, who shall discharge his duties as such conductor in the manner provided by By-law No. 353, passed by the Council of the Corporation of the City of Toronto, on the twenty-second day of June, one thousand eight hundred and sixty-one, entitled "A By-law Respecting Street Railways," and it shall not be lawful for any person or persons, or body corporate to use or operate any Street Railway in the City of Toronto with cars not having both conductors and drivers thereon, when such cars are in use on the streets of the said City.

II.

Any person or persons guilty of an infraction of any of the provisions of this By-law, shall upon conviction before the Mayor, Police Magistrate, or any Justice

or Justices of the Peace for the City of Toronto, on the oath or affirmation of any credible witness, forfeit and pay at the discretion of the said Mayor, Police Magistrate, Justice or Justices convicting, a penalty not exceeding the sum of fifty dollars for each offence, exclusive of costs, and in default of payment thereof forthwith, it shall and may be lawful for the Mayor, Police Magistrate, or Justice convicting as aforesaid, to issue a warrant under his hand and seal, or in case the said Mayor, Police Magistrate, and Justice or Justices, or any two or more of them are acting together therein, then under the hand and seal of one of them, to levy the said penalty and costs, or costs only, by distress and sale of the offender's or offenders' goods and chattels; and in case of no sufficient distress to satisfy the said penalty and costs, it shall and may be lawful for the Mayor, Police Magistrate, Justice or Justices convicting as aforesaid, to commit the offender or offenders to the common gaol of the said City of Toronto, with or without hard labour, for any period not exceeding six calendar months, unless the said penalty and costs be sooner paid.

I certify that I have examined this Bill and that it is correct.

ROBERT RODDY,

City Clerk.

COUNCIL CHAMBER,

Toronto, December 18th, 1882.

[L.S.] W. BARCLAY McMURRICH,

Mayor.

LXXXII.

Ald. George Evans, seconded by Ald. Maughan, moves that in consideration of the dangerous state of some of our roadways, caused by the Street Railway Company allowing a large quantity of earth, etc., to accumulate between their tracks making it extremely dangerous to travel, the City Solicitor report to this Council at its next meeting if said company are legally bound to remove said obstructions, and if so, that action be taken at once to compel them to remove said obstructions immediately, and that the 33rd and 35th rules of this Council be dispensed with, so far as relates to this motion, which was carried.

(Minute No. 85. Minutes of Council, Jan. 22nd, 1883.)

LXXXIII.

The following communications were read :

From the City Solicitor, respecting the accumulation of snow between the street railway tracks, on the various streets of the city, where such tracks are laid.

(Minute 121, Minutes of Council, February 5th, 1883.)

LXXXIV.

In Council :—

Ald. Crooker, seconded by Ald. Bell, moves that the Street Railway Company be instructed to extend their tracks and street car service westward on College street, from Bathurst to Clinton street.

Ald. Crooker, seconded by Ald. Bell, moves that the foregoing motion be referred to the Committee on Works, which was carried.

(Minute 218, Minutes of Council, Feb. 12th, 1883.)

LXXXV.

Report No. 5 of the Committee on Works.

Your Committee beg to report that they have had before them the motion of Ald. Crooker, referred to them by the Council to the effect "that the Street Railway Company be instructed to extend their tracks westward on College street, from Bathurst to Clinton street," and, after considering the same, beg to recommend its adoption; and that the City Solicitor be instructed to give the necessary legal notice to comply therewith.

Committee Room, Toronto, Feb. 14th, 1883.

(Appendix No. 78, Minutes of Council, 1883.)

The Council resolved itself into Committee of the Whole on Report No. 6 of the Executive Committee, Ald. Carlyle in the chair.

The Committee rose. Ald. Carlyle reported that the committee had adopted the report with the following amendments :— [None relating to this—Ed.]

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute No. 258, Minutes of Council, Feb. 10th, 1883.)

LXXXVI.

To the Council of the Corporation of the City of Toronto :

The Executive Committee beg to submit their Report No. 7 :

In the matter of a suit instituted against the City by the Toronto Street Railway for an alleged appropriation of certain stone taken from Yonge street on the occasion of laying down a cedar block roadway on that thoroughfare, and to restrain the City from any like appropriation of material, your committee recommend that the City Solicitor be authorized to retain Mr. Christopher Robinson, Q.C., to

act, with him in defending the suit, the same being an important one both as regards the present and future interests of the City.

Committee Room, Toronto, February 22nd, 1883.

(App. No. 87, Minutes of Council, 1883.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 7 of the Executive Committee, Ald. Geo. Evans in the chair.

The Committee rose. Ald. George Evans reported that the Committee had adopted the report without amendment.

The report was received.

The report was adopted.

(Minute No. 276, Minutes of Council, Feb. 26, 1883.)

LXXXVII.

The following petitions were received :

Ald. Millicham—From the Toronto Street Railway Company, praying for the repeal of by-law No. 1,264, respecting street railways.

(Minute 307, Minutes of Council, March 5th, 1883.)

LXXXVIII.

In Council :—

Ald. Moore, seconded by Ald. Hastings, moves that the Street Railway Company be instructed to forthwith extend their street car track and service on Yonge street to the northerly limits of the city.

Ald. Moore, seconded by Ald. Hastings, moves that the foregoing motion be referred to the Committee on Works, which was carried.

(Minute 500, Minutes of Council, April 21st, 1883.)

LXXXIX.

LETTER FROM THE PRESIDENT OF THE STREET RAILWAY CO.

To His Worship the Mayor in Council assembled.

DEAR SIR,—In a slip sent me from one of the City papers, I see an article headed "A Corporation Blunder," which states that by not giving the Street Railway Company due notice, there would be considerable delay in the proposed roadway improvement.

Now if this is the only blunder the Corporation is guilty of, the public will not suffer any, as the Street Railway Company do not intend taking advantage of any such oversight of the Corporation, or any of its officers, and whenever that body is ready to go on with the street improvement, the Company will waive all notice

and allow the work to go on without any delay whatever; but would make a request that the City will if possible not allow all the work on King and Queen streets to go on at the same time, as if they did, the public would not be served, and much inconvenienced, the Company would also suffer severely, in not being able to run their cars, and this, coming immediately after such a very long winter, would be to them a great hardship.

It might also be inferred from what has passed at the Board of Works, that the Company refused to repair withip, and eighteen inches outside the tracks. Now such is not, nor could be the case, as the Company is bound to keep the aforesaid mentioned ground, viz., all inside the tracks and eighteen inches outside, in good order, and the Company will in every case, where they are liable, see that this is carried out; but there may be places where the Company are not liable, from the fault of some error in judgment on the part of the Corporation or others.

Should a case of this kind arise there need be no cause for dispute, as the Company will upon every occasion submit to a settlement by arbitration, or a friendly suit in the Court of Justice, where all matters of this kind can be amicably settled; therefore should the Company at any time prove delinquent in doing their duty to the City, the Corporation will have it in their power to compel them.

As the Company is desirous of doing all that is fair and just, they desire that the City should go on with the work they have in view, and the Company will, as heretofore, pay their proportion of the expense.

If it were possible that the City could leave the tracks on one or more of these streets for the Company to keep in first class order with macadam, or cobble, as they thought best, the Company would keep these tracks so that there could be no cause for complaint, or if not advisable on both streets, it might be adopted on Queen street, where most of the grade will answer as it now stands.

Should the above suggestion be adopted the Company will put on a section man and keep the roads as level and hard as desired, this course would be found to be the best in the end, as Queen street travel need scarcely be stopped at all, or if at any place where the track did not answer to the grade the rails could be easily dropped to the new grade, and only stop the car traffic but slightly.

The Company would respectfully request that the City would put them in possession of College street so that they could complete the work at once, and start a line of cars from the Walker House, by McCaul street, via Spadina, and thence to Bloor street, as the tracks are all laid and ready to run with the exception of that part of College street and the connection at King and Queen, which can be completed in a few days.

The Company would further suggest that if the City would agree to take charge of all outside the rails, and keep the road in good order, the Company would pay upon every occasion the amount of cost for so doing. This course would benefit the public as the dividing line outside the rail should always be renewed or kept in repair by the one party, and done at the same time, then a better job could be performed, and by this course the City would largely benefit, and there would be no need for any dispute, as to whose fault it is if outside the track is not kept in

good order. And should either party consider they have good cause for complaint, the matter can be easily settled by the adoption of the course already mentioned.

There is another matter which has been suggested, but which is not considered by the Company to be practicable; that is that the Company would cause to be put down a turn-table at the corner of King and Yonge streets. This would it is believed be a great mistake, and a source of much annoyance to the public, as the long two-horse cars would take up the whole street, and take twice the time to turn that they now do to go round a curve, and should the driver of one of these large cars by any mischance happen to go two or three inches too far on the track he would be unable to get it back so as to turn, and would be either obliged to unhitch and draw back, or get five or six men to push it back before a turn could be effected, during all of which time the whole traffic would be stopped. Another objection to its adoption would be that during the winter season the frost and snow would always give trouble, and greatly interfere with its working. Knowing these facts concerning turn-tables the Company consider they would be a failure and could not advise the adoption of them.

The Company would suggest a plan, which will if adopted, relieve the corner of King and Yonge streets from any interruption whatever. That is to run the track, on Yonge street to Front, thence to the Stables, where a change of horses can take place. This would carry all those who wished to go to the St. Lawrence Market direct to the south end of it, and by the adoption of this plan all Yonge and Queen street cars could go straight down, thereby causing no stoppage on the street by turning. It would also enable all those wishing to get to the wharves, or road station, to be carried to and from Front street to almost every point, it would do away with the nuisance of the standing and changing horses' rests, which is the cause of a great deal of complaint at present. It would relieve King street east of Yonge from these two lines of cars, and give crossing on both King and Yonge streets.

By adopting the course spoken of it would be much the best for the City, and serve the public much better than they are at present, and whatever is beneficial to them, must likewise be for the Company, as every thinking man will see that the three interests, viz., that of the Corporation, the Public, and the Company, are identically the same, and should upon all occasions be considered together and at the same time.

If such a course would be followed all cause for dispute would be removed, and the work better and more satisfactorily performed for all concerned. So should this plan meet with your approval, now would be the time to put it into execution, while the new work is being done on King street.

Trusting that your worshipful body will kindly consider these facts, and that you will give the Company as long notice as you possibly can,

I have the honor to be, yours, &c.,

FRANK SMITH,

President.

[Read in Council May 7th, 1883, and referred to the Board of Works.]

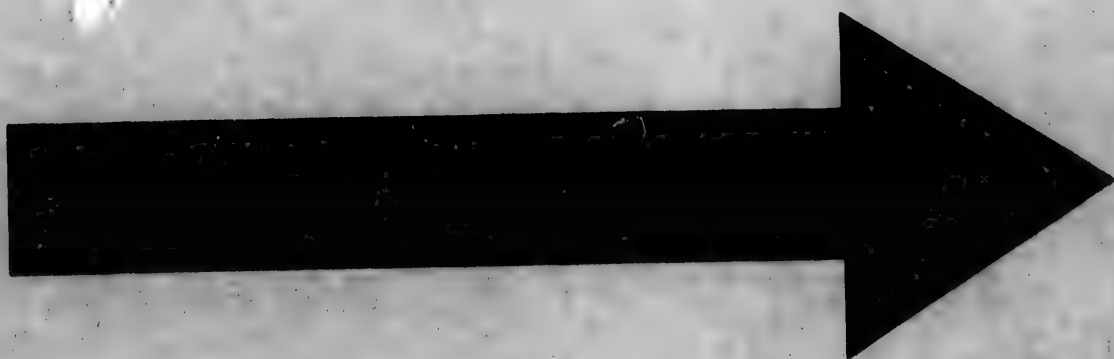
XC.

Report No. 15 of the Committee on Works.

In the month of May last the Council, by the adoption of Report No. 17 of your Committee, ordered that the Street Railway Company be notified to construct a line of street railway on College street, from Clinton to McCaul and Reade streets. The Company accepted the notice and proceeded at once with the work, but when the head of McCaul street was reached the University authorities informed the Corporation that they would not allow the tracks to be laid on the College avenue, from McCaul street to the western gate, except upon certain conditions, which were submitted to the Council of last year. (See Appendix, page 776, Minutes 1882.)

The conditions referred to may be briefly stated as follows :

- (1) The Yonge street avenue to be paved with cedar blocks from end to end;
- (2) Sidewalks eight feet wide to be laid on both sides.
- (3) Trees now growing to remain, and others to be planted at intervals of fifteen feet; the spaces between the sidewalks and curb to be clean raked, not turfed.
- (4) Before pavement is laid, proper sewers to be constructed and water and gas mains laid down to all properties on the street.
- (5) Paving to be laid close and flush to rails. The Railway Company to conform to provisions of statute, 24 Vic., chap. 83, particularly as to construction, and with the view of offering as little impediment to traffic as possible. The gauge to be suitable for ordinary vehicles.
- (6) Arrangements with the lessees of University to be such as not to expose the University or Government to any claim on the part of the said lessees.
- (7) The City to keep sewer, gas, and water mains, roadways, railway tracks and sidewalks in repair, and protect trees from injury.
- (8) The same condition to apply to the line of street railway on the portion of the avenue between McCaul and College streets.
- (9) The whole work to be completed by the 31st December, 1883.
- (10) In the event of any of the foregoing conditions not being complied with, the Senate to have power to withdraw the leave hereby given, and the City to restore the street to its present state. The Senate may also appoint a man to inspect the works.
- (11) The present concessions are only made to allow the street railway to be laid, and for giving free access to the avenue from streets now opening into it and does not effect the terms in the original lease.
- (12) A formal agreement to be entered into between the City and University when the above conditions are agreed to.



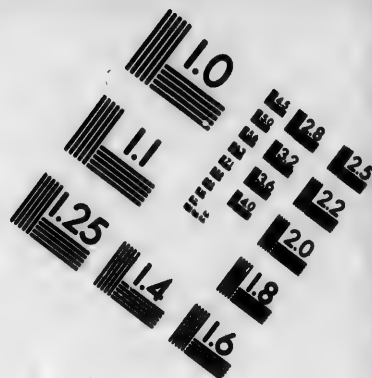
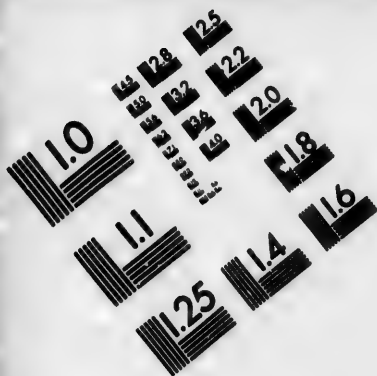
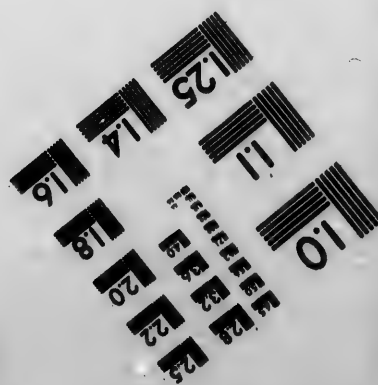
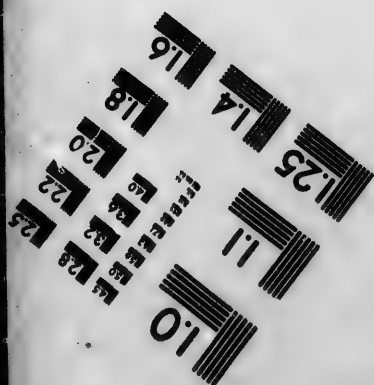
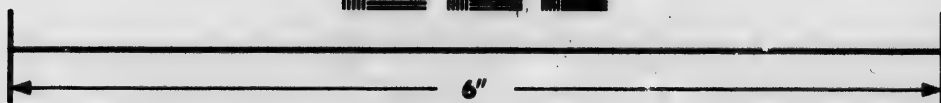
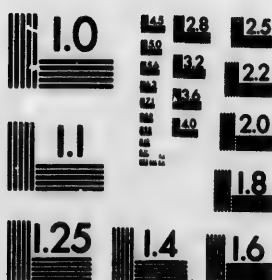


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After considering the foregoing proposals your Committee took exception to clauses 4, 6, 9 and 10, and subsequently submitted a revised basis of agreement which was approved of by the Council (see Appendix page 776, 1882) and which your Committee have reason to believe will be acceptable to the University authorities. The annexed abstract from report from the City Engineer giving the estimated cost of the improvements suggested is submitted for the information of the Council.

It may be added that the Street Railway Company have constructed their line with the exception of the portion referred to on the Yonge street avenue and are anxious to make the connection, as will be seen by the accompanying letter from their secretary; also, that the residents of the northwestern portion of the City are put to great inconvenience in consequence of the non-completion of the road. In view of these facts, and taking into consideration the urgent necessity of placing the avenue in a condition to be available as the leading thoroughfare across the northern portion of the City for all kinds of traffic, your committee would recommend that in the event of satisfactory arrangements being made with the University authorities for an extension of time for making the improvements contemplated in the foregoing agreement till the 31st day of December, 1884, and their consent thereto, as amended, being obtained, that the said agreement be approved and ratified by the Council and that an appropriation of \$3,184 be made for the purpose of paving and constructing sidewalks on the avenue from McCaul street to its west end, so as to allow the Street Railway Company to make the connection required; the sewers and balance of pavement and sidewalks to be completed next year.

Committee Room, Toronto, May 15th, 1883.

EXTRACT FROM REPORT OF CITY ENGINEER *Re* YONGE STREET AVENUE.

In compliance with the directions of the committee, I beg to submit an estimate of the cost of improving the Yonge street avenue on the plan suggested by the Senate of the University:

Expense of sewerage.....	\$ 6000 00
Cedar block roadway and wooden curbing	25000 00
Sidewalks, 8 feet wide, on each side.....	2000 00
Total.....	\$33000 00

Of this sum the Street Railway Company would pay \$7,500 as their share of the pavement.

OFFICE OF THE TORONTO STREET RAILWAY COMPANY,
Toronto, 16th April, 1883.

John Turner, Esq., Chairman Committee on Works.

DEAR SIR,—I beg respectfully to bring before you and your Committee the position in which this company is placed in regard to the line of street railway known as the College and McCaul street route. This line was constructed at the request of

the City last fall, but the company has been prevented from taking possession and operating the same, on account of not being allowed to continue the track on College street, so as to make the connection with the track on McCaul street. As it is the city's intention to lay a pavement soon on King street, which will necessitate the suspension of the Spadina avenue ordinary route, and leave those living in the north-eastern part of the city without any accommodation it is of the utmost importance that the McCaul street route be completed so that the citizens can use that line.

I hope, therefore, that steps will be taken by your committee to enable us to put this line into operation as soon as possible.

Yours truly,

JAMES GUNN,

Secretary.

[The letter as printed in appendix reads "north-eastern," but evidently "north-western" is meant.—Ed.]

(Appendix No. 332, Minutes of Council, 1883.)

In Council :—

The Council resolved itself into Committee of the Whole on Reports Nos. 18 and 19 of the Executive Committee. Ald. Walker in the chair.

The Committee rose. Ald. Walker reported that the Committee had adopted Report No. 18 with the following amendment: [None relating to Street Railways.—Ed.]

The report was received.

The amendments were concurred in.

Upon the question that Report No. 18 as amended be adopted, it was carried.

(Minute 604, Minutes of Council, May 21st, 1883.)

XCI.

Report No. 18 of the Committee on Works.

On the 27th of December last a motion was referred by the Council to the then Committee on Works, to the effect that the Street Railway Company be notified to continue the Yonge street track south of King street to the Union Station, who reported recommending concurrence therein. An Order in Council was accordingly given on the 8th of January, and the Street Railway Company notified. Since then petitions have been received from merchants and others on King street east and Yonge street south of King respectively, against the continuation of the track.

Your Committee have held a conference with deputations from the petitioners and the President of the Street Railway Company, at which the latter urged the necessity of having a track to the company's stables on George street, so as to do away with the complaints caused by changing horses on the streets, and consented to abandon the extension of the Yonge street track south of King, as well as to continue to run the Yonge street and Queen street cars along King east

to the Market, provided the City give the Company the right of way to lay a double track on George street, south of King, to the Company's stables.

Your Committee beg leave to recommend that the above proposition be concurred in.

Committee Room, Toronto, June 19th, 1888.

(Appendix 414, Minutes of Council, 1888.)

In Council:—

The Council resolved itself into Committee of the Whole on Reports Nos. 22 and 23 of the Executive Committee—Ald. Crocker in the chair. (See Appendix Nos. 59 and 60.)

The Committee rose. Ald. Crocker reported that the Committee had adopted Report No. 22 with the following amendment: [*Not relating to Street Railway—Ed.*]

The report was received.

The amendments were concurred in.

Upon the question that the Report No. 22 as amended be adopted it was carried.

(Minute No. 708, Minutes of Council, June 25th, 1888.)

XCII.

In Council:—

Ald. Denison, seconded by Ald. Crocker, moves that the City Engineer be instructed to write to the Street Railway Company, asking that the street cars on Dundas street be run through to the St. Lawrence Hall without change, and that at least three cars an hour be placed on that route, and that the 33rd and 35th Rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute 984, Minutes of Council, October 29th, 1888.)

XCII.

Report No. 39 of the Committee on Works.

Your Committee have received a communication from the Honourable Frank Smith, President of the Toronto Street Railway Company, stating that now the track from River street on Queen street had been completed it would be only proper to give the residents of the north-east portion of the City a car service to Front street, and requesting permission to continue their track on Yonge street, south of King, to make the connection at Front street.

After giving the above communication due consideration, your Committee would recommend that the request be granted: provided the Street Railway Company grant persons travelling on Queen street route, in case they should desire to go west ward, the privilege of being transferred to the western bound cars at the single fare; and that in case a new pavement be laid on Yonge street, south of King street, the

Street Railway Company bind themselves to pay their just proportion of the cost of construction.

(Appendix 847 to Minutes of Council, 1883.)

Your Committee would also recommend, at the request of the Toronto Street Railway Company, that the city take control of the eighteen inches of roadway on either side of the street railway tracks, and repair the same when necessary, the charges for such repairs to be borne by the Street Railway Company, and that the necessary agreement be entered into with the Company for this purpose.

Committee Room, Toronto, December 4th, 1883.

(Appendix 848, Minutes of Council, 1883.)

REPORT OF EXECUTIVE COMMITTEE THEREON.

To the Council of the Corporation of the City of Toronto:

The Executive Committee beg to submit their Report No. 42:

Your Committee have had before them the following reports of committees, and submit the same for the consideration of the Council subject to the exceptions taken:

Report No. 39, Committee on Works and recommendations embodied therein.

Your Committee, referring to the proposition to allow the Toronto Street Railway Company to continue their tracks on Yonge street southward to Front street on certain conditions, recommend that the same be concurred in on the further condition that the Company agree to run their cars on the Dundas street route through to the St. Lawrence Hall.

Committee Room, Toronto, Dec. 6th, 1883.

(Appendix 846, Minutes of Council, 1883.)

In Council:—

The Council resolved itself into Committee of the Whole on Reports Nos. 42 and 43 of the Executive Committee, Ald. Maughan in the chair.

The Committee rose. Ald. Maughan reported that the Committee had adopted Report No. 42 with the following amendments: . . . striking out the clauses in Report No. 39 of the Committee on Works and Report No. 42 of the Executive Committee having reference to the extension of the street railway on Yonge street, for the purpose of referring the same back to the committee for further consideration;

The report was received.

The amendments to Report No. 42 were concurred in.

Report No. 42, as amended, was adopted.

(Minute No. 1070, Minutes of Council, Dec. 10th, 1883.)

XCIV.

Report No. 40 of the Committee on Works.

Your committee has received a communication from Mr. Richard H. R. Munro, reminding it that Hon. Frank Smith, President of the Toronto Street Railway Company, agreed about sixteen months ago to have a street railway track laid down on Bathurst street, from Queen street to Bloor street, as soon as it was practicable to do so after the earth had settled over the sewer on Bathurst street. Your Committee would therefore recommend that the necessary notice be served upon the President of the Street Railway Company, requiring him to have a street railway track constructed on the said portion of Bathurst street without unnecessary delay.

Committee Rooms, Toronto, Dec. 18th, 1883.

(Appendix No. 888, minutes of Council, 1883.)

The Council resolved itself into Committee of the Whole on Report No. 44 of the Executive Committee, Ald. Ryan in the chair.

The Committee rose. Ald. Ryan reported that the Committee had adopted the report with the following amendments: [*None relative to this matter.—Ed.*]

The report was received.

The amendments were concurred in.

Upon the question that the report as amended be adopted it was carried.

(Minute 1,094, Minutes of Council, December 22nd, 1883.)

XCV.

Report No. 42 of the Committee on Works.

Your Committee beg to report that it has considered the proposition of the Toronto Street Railway Company for leave to extend its track down Yonge street to Front street, so as to form a new route between the Don bridge and the Union station by way of Queen street, Yonge street and Front street. An influential delegation of merchants, headed by Mr. J. L. Blaikie, waited upon your Committee and protested against the laying down of the contemplated track. They contended that, in consequence of the narrowness of the street, and the absence of adequate accommodation in the rear, their business would be much hampered if either a single or double track were laid down on the street. After full consideration of the matter it was decided to refuse to comply with the request of the Company.

Committee Room, Toronto, January 12th, 1884.

(Appendix 952, Minutes of Council, 1883.)

In Council :—

The Council resolved itself into Committee of the Whole on Reports Nos. 46 and 47 of the Executive Committee, Ald. Baxter in the chair.

The Committee rose. Ald. Baxter reported that the Committee had adopted the reports without amendment.

The report was received.

The reports were adopted.

(Minute 1,148, Minutes of Council, January 18th, 1884.)

XCVI.

Report No. 5 of the Committee on Works.

The City Engineer reports that in compliance with an order of the Council he wrote to the Hon. Frank Smith, President of the Toronto Street Railway Company, requiring that cars be run on the route between the St. Lawrence market and Brockton, without change or transfer of passengers. In reply to his communication he received and now submits the following letter from the Secretary of the said Company :

OFFICE OF THE TORONTO STREET RAILWAY COMPANY,

March 25th, 1884.

Charles Sproatt, Esq., City Engineer, Toronto :

DEAR SIR,—Yours of the 22nd instant was duly received; asking this company to comply with a resolution adopted by the Council in respect to the running of the cars on Dundas street.

I beg to state that whilst this Company cannot admit the right of the City Council to direct us as to how the cars should be run, it will always be the desire to comply with its demands when reasonable, and, in this instance, I am glad to state that such desire will be carried out.

It is the intention, as soon as the condition of the streets will allow the regular running time to be adopted, to run the Dundas street cars through without change to St. Lawrence Hall.

Yours truly,

JAMES GUNN,

Secretary.

(App. 178 to Minutes of Council, 1884.)

XCVII.

Report No. 13 of the Committee on Works.

It is recommended that the Toronto Street Railway Company, which will themselves relay the track on Spadina avenue, (the work not being included in the

pavement contract,) be allowed the cost thereof, and that the amount be embodied in the by-law, thus allowing the company the usual time covered by the same for the payment of the cost of the work.

Committee Room, Toronto, June 8rd, 1884.

In Council :—

The Council resolved itself into Committee of the Whole on the Report No. 19 of the Executive Committee, Ald. Steiner in the chair. (See Appendix No. 62.)

The Committee rose. Ald. Steiner reported that the Committee had adopted the report with the following amendments: [*None relating to Street Railways—Ed.*]

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute 604, Minutes of Council, June 18th, 1884.)

XCVIII.

In Council :—

Ald. Fred. C. Denison, seconded by Ald. Woods, moves that the proper officer be instructed to notify the Toronto Street Railway Company to continue their track along Dundas street to the White Bridge, and that the 38rd and 35th rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute 700, Minutes of Council, July 7th, 1884.)

XCIX.

Report No. 15 of the Committee on Works.

It is recommended that the City Engineer be authorized and instructed to communicate with the Hon. Frank Smith, President of the Toronto Street Railway Company, requesting him to comply with the terms of an agreement formerly entered into between your Committee and the said Street Railway Company, and for a time in a measure complied with, to give a car service on Queen street, between the Don Bridge on the east, and Gladstone avenue on the west.

(Minute 508, Appendix to Minutes, 1884.)

It is also recommended that the Street Railway Company be required to resume the McCaul and Front street car service forthwith.

(Minute 509, Appendix to Minutes, 1884.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 22 of the Executive Committee, Ald. Smith in the chair. (See Appendix No. 77.)

The Committee rose. Ald. Smith reported that the Committee had adopted the report with the following amendments: [*None relating to this matter.—Ed.*]

The report was received.

Upon the question that the report as amended be adopted, it was carried.

(Minute No. 708, Minutes of Council, July 7th, 1884.)

C.

Report No. 17 of the Committee on Works.

Your Committee begs to report that at its last meeting it was again waited upon by a deputation of citizens in relation to the necessity of extending the Yonge street railway track to Front street, for the purpose of accommodating citizens from the north and north-eastern part of the City, who may wish to reach the wharves and railway stations. A petition largely signed was presented to the same effect. Several gentlemen doing business on Yonge street attended and opposed the project.

After careful consideration your Committee would recommend that a double track be laid down on Yonge street from King street to Front street, on the distinct understanding that the street car service, as at present on King street, be not diminished; and further, that so soon as the line is completed to Front street, the Street Railway Company shall operate the Queen Street East railway line to the Walker House, and shall grant transfer tickets to those passengers who wish to continue their journey along Queen street west, and *vice versa*, at one ordinary fare; and that the Street Railway Company pay any additional expense that may be incurred in putting down the aforesaid tracks, over and above their portion of the cost of the new stone block pavement about to be laid down on Yonge street.

(Appendix 558 to Minutes of Council, 1884.)

In Council:—

The Council resolved itself into Committee of the Whole on Report No. 24 of the Executive Committee, Ald. Irwin in the chair.

The Committee rose. Ald. Irwin reported that the Committee had adopted the report with the following amendments:

striking out the words "that the street car service as at present on King street be not diminished," in the clause of the said report having reference to the extension of the street railway tracks on Yonge street south of King street, and inserting the words, "that every alternate Yonge street car proceed down the proposed extension to Front street, thence along Front to opposite the Union Station;" and adding at the end of the same clause the words, "and that this recommendation shall not be acted upon until an agreement be drawn by the City Solicitor binding

the Toronto Street Railway Company to carry out this agreement, and executed by the said Company."

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute 571, Minutes of Council, July 21st, 1884.)

CL.

Report No. 22 of the Committee on Works.

Your Committee beg to report for the information of Council that by order of your Committee the City Engineer has addressed a letter, on the 20th Sept., to the Hon. Frank Smith, President of the Toronto Street Railway Company, requiring the said company to repair the said Yonge street pavement on the outside of the rail. In reply to this notification, Mr. James Gunn, Secretary of the Street Railway Company, refused on behalf of the Company to make any repairs to the pavement, contending that the Company was only liable for the payment of the cost of the pavement when originally laid down. It is therefore recommended that a demand be again made upon the Company by the City Engineer to have the repairs made to the pavement above mentioned, and in case of refusal the City Engineer should be authorized to have the repairs made, and that the City should proceed in the Courts to collect the cost of the work from the Street Railway Company; or a special case might be prepared, if deemed preferable, for submission to a Judge of one of the Superior Courts for his opinion thereon as to who is liable for the repairs to the pavement.

(Appendix 923 to Minutes, 1884.)

In reference to the running of the one horse cars without conductors, as ordered by the Council, the City Clerk intimated by way of an advertisement in the daily papers, that any citizen who desired to do so should be heard before the Committee on Works in relation thereto; but although the President and Solicitor of the Street Railway Company were present at the last meeting of the committee, no person attended to complain of the running of the said cars without conductors.

Committee Room, Toronto, October 14th, 1884.

(Appendix 930 to Minutes 1884.)

In Council:—

The Council resumed Committee of the Whole on Reports Nos. 37 and 38 of the Executive Committee, Ald. Septimus A. Denison in the chair.

The Committee rose. Ald. Septimus A. Denison reported that the Committee had adopted Report No. 37 with the following amendments:

striking out the clause in the said report having reference to the running of one horse cars without conductors, for the purpose of referring the same back to the Committee, with a view of obtaining their report as to whether it would be in the interest of the City to compel the Toronto Street Railway Company to place conductors as well as drivers on all street cars:

The report was received.

Upon the question that Report No. 87 as amended be adopted, it was carried.
(Minute 996, Minutes of Council, October 20th, 1884.)

CII.

In Council :—

Ald. Brandon, seconded by Ald. Barton, moves that the rules and regulations for the running of street cars, as embodied in the charter of the Toronto Street Railway Company and the By-laws of the City, be enforced at once, which was carried.

(Minute 168, Minutes of Council, February 23rd, 1885.)

CIII.

Report No. 4 of the Committee on Works.

ONE HORSE CARS.

Your Committee begs to report that it has considered a resolution sent to it by the Council of 1884, in reference to the operation of one horse cars in this City without conductors, and after hearing an explanation in relation thereto from the Hon. Frank Smith, President of the Street Car Company, would recommend that the clause of the by-law requiring conductors as well as drivers to be placed on one horse cars be suspended for the period of three months, in order to obtain further information on the subject.

Committee Room, Toronto, March 10th, 1885.

(Appendix 150 to Minutes of Council, 1885.)

In Council :

The Council resumed in Committee of the Whole on Reports No. 5 and 6 of the Executive Committee, Ald. Johnston in the chair.

The Committee rose. Ald. Johnston reported that the Committee had adopted Report No. 5 with the following amendments: [*None relative to Street Railway Company.*—Ed.]

The amendments to Report No. 5 were concurred in.

The report was adopted:

(Minute 270, Minutes of Council, March 28rd, 1885.)

CIV.

Report No. 7 of the Committee on Works.

Your Committee begs to recommend that the Toronto Street Railway Company be required to extend its track eastward on Queen street (Kingston road) to

Greenwood's line (east City limit on the north side), in order to give street car accommodation to the residents in the eastern part of the City.

It may be stated for the information of the Council, that although the City has no power to compel the Kingston Road Tramway Company, (at present occupying the south side of the street), to remove its track into the centre of the street, it has the power to allow the Toronto Street Railway Company to lay down a track on the same street.

It is also recommended that the City Engineer and City Solicitor be authorised and instructed to require the Kingston Road Tramway Company to put its track in a thorough state of repair immediately.

(Appendix 263 to Minutes of Council, 1885.)

SUIT AGAINST THE STREET RAILWAY COMPANY.

It is recommended that a suit be instituted against the Toronto Street Railway Company to recover the cost of repairs done by the City to the cedar block pavements on those portions of the streets occupied by the said Street Railway Company's tracks, the cost of repairs now being made to the cedar pavements, for which it is held the Company is liable, to be included in the City's claim. It is also recommended that the City Solicitor be authorized at the same time to defend the suit which it is the intention of the Street Railway Company to bring against the City for cobble stone alleged to have been taken from the company's portion of the track by the City.

(Appendix 269 to Minutes of Council, 1885.)

RAILWAY TRACK TO THE EXHIBITION GROUNDS.

Your Committee begs to report that a communication has been received by your committee from John J. Withrow, Esq., President of the Industrial Exhibition Association, asking that steps be taken by the Council to have the street railway tracks extended to the Exhibition grounds.

It is therefore recommended that the City Engineer be instructed to request the Toronto Street Railway Company to extend the track to the Exhibition grounds, by way of Strachan Avenue, as soon as possible to have the work constructed.

(Appendix 274 to Minutes of Council, 1885.)

Committee Room, Toronto, April 21st, 1885.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 10 of the Executive Committee, Ald. McMillan in the chair.

The Committee rose. Ald. McMillan reported that the Committee had adopted the report with the following amendments :
striking out the clauses in the said report (No. 7) having reference to the extension of the street railway tracks to the Exhibition grounds, for the purpose of referring the same back to the Committee with a view of having a conference with

the Presidents of the Industrial Exhibition Association and the Toronto Street Railway Company and the City Engineer in reference thereto.

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute 896, Minutes of Council, April 27th, 1885.)

CV.

Report No. 14 of the Committee on Works.

Your Committee begs to report that, having considered the petition of the Metropolitan Street Railway Company, of Toronto, praying for leave to construct and establish a tramway upon the reservation for a street around the Island, from a point in the neighborhood of Hanlan's Point to a point at or near the Wiman Swimming Baths, or otherwise as may be found necessary, they recommend that the same be granted, upon the terms and conditions to be hereafter agreed upon and entered into between the Corporation and the Street Railway Company, subject to the rights, if any, of the Toronto Street Railway Company.

And your Committee further recommends that the City Solicitor be instructed to give the necessary notice to the Toronto Street Railway Company forthwith, if, on examination, it be found that they are entitled to the option of constructing such railway.

Committee Room, Toronto, July 18th, 1885.

(Appendix 629 to Minutes of 1885.)

In Council :

The Council resolved itself into Committee of the Whole on Reports Nos. 20 and 21 of the Executive Committee, Ald. Elliott in the chair.

The Committee rose. Ald. Elliott reported that the Committee had adopted Report No. 20 with the following amendments: [*None relating to this matter.*—Ed.]

The report was received.

The amendments were concurred in.

Upon the question that Report No. 20, as amended, be adopted, it was carried.

(Minute 681, Minutes of Council, July 27th, 1885.)

CVI.

In Council :—

The following communications were read :

From the City Solicitor, stating the reasons why proceedings have not been instituted against the Toronto Street Railway Company, to compel it to pay a share of the cost of repairs to the block pavements along the line of railway tracks.

(Minute 671, Minutes of Council, August 10th, 1885.)

CVII.

In Council:—

Ald. Barton, seconded by Ald. M. J. Woods, moved that the Toronto Street Railway Company be requested to run a certain number of Queen street west and Brookton cars down York street to Front street, in order to give the residents of the western part of the City a direct route to the Union station.

Ald. Carlyle, seconded by Ald. Barton, moved that the foregoing motion be referred to the Committee on Works for consideration, which was carried.

(Minute No. 710, Minutes of Council, August 19th, 1885.)

CVIII.

Report No. 20 of the Committee on Works.

CARS TO UNION STATION.

Your Committee begs to report that it has considered the following resolution forwarded by the City Clerk pursuant to the order of the Council at its meeting held on the 19th August, 1885:

Resolved,—That the Street Railway Company be requested to run a certain number of Queen street west and Brookton cars down York street to Front street, in order to give the residents of the western part of the City a direct route to the Union Station. Your Committee therefore recommends in favour of this request being made upon the Street Railway Company.

Committee Room, Toronto, September 21st, 1885.

(Appendix 788 to Minutes of Council, 1885.)

The Council resumed Committee of the Whole on Reports Nos. 26 and 27 of the Executive Committee, Ald. Mackenzie in the chair.

The Committee rose. Ald. Mackenzie reported that the Committee had adopted the Report No. 26 with the following amendments:—[None relating to this matter.—Ed.]

The report was received.

The report as amended was adopted.

Upon the question that Report No. 26 as amended be adopted, it was carried.

(Minute 788, Minutes of Council, September 28th, 1885.)

CIX.

Report No. 21 of the Committee on Works.

STREET CAR SERVICE.

Your Committee recommends that the Toronto Street Railway Company be notified by the City Engineer that it is required by the city corporation that the

street car accommodation be extended across the River Don by way of the King street bridge, and thence along Broadview avenue to Danforth avenue; or by way of the Gerrard street bridge to Broadview avenue, thence to Danforth avenue; and to operate such line in order to make a street car service between the Union Station and Danforth avenue.

Your Committee further recommends that the City Engineer be instructed to notify the Toronto Street Railway Company that it is required by the City Corporation to lay down a line of tracks on Carlton street, between Sherbourne street and Yonge street, and to operate the said line from the eastern end of the Winchester street tracks to the western terminus of the College street tracks.

Committee Room, Toronto, September 29th, 1885.

(Appendix 844 to Minutes of Council, 1885.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 28 of the Executive Committee. Ald. Pepler in the chair. (See Appendix No. 171.)

The Committee rose. Ald. Pepler reported that the Committee had adopted the report with one amendment. [Not relative to this matter.—Ed.]

The report was received.

Upon the question that the report as amended be adopted, it was carried.

(Minute 808, Minutes of Council, October 5th, 1885.)

CX.

Report No. 29 of the Committee on Works.

Your Committee begs to report that it has had before it the resolution passed by the Council on the 5th inst., to the effect "that the rules and regulations governing the Toronto Street Railway be enforced at once;" and, in reply, would recommend that the proper authorities be instructed to draw the attention of the Street Railway Company to the fact that certain two horse cars are being run without conductors, requesting that the by-law be carried out in this respect.

Committee Room, Toronto, October 18th, 1885.

(Appendix 898 to Minutes of Council, 1885.)

In Council :—

The Council resolved itself into Committee of the Whole on Reports Nos. 29 and 30 of the Executive Committee, Ald. Saunders in the chair.

The Committee rose. Ald. Saunders reported that the Committee had adopted Report No. 29 with the following amendments: [None relating to this matter.—Ed.]

The report was received.

Upon the question that Report No. 99 as amended be adopted, it was carried.

(Minute 828, Minutes of Council, October 19th, 1885.)

CXI.

In Council :—

Ald. Shaw, seconded by Ald. Hastings, moves that the Committee on Works be requested to devise some better mode of keeping the streets of the City on which the Street Railway Company has its tracks clear of snow during the winter months, more especially Yonge street, so that the banking up on either side of these streets, to the great annoyance and inconvenience of the merchants and people doing business thereon, may be avoided; and to that end, if deemed advisable, a conference to be had with the Street Railway authorities, who, it is understood, have some plan in view for that purpose, and that the 83rd and 85th rules of the Council be dispensed with so far as they relate to this motion, which was carried.

(Minute 835, Minutes of Council, October 19th, 1885.)

CXII.

In Council :—

Ald. Turner, seconded by Ald. Piper, moves that the by-law with reference to the placing of conductors on the one horse street cars of this City be suspended pending a reference to the Committee on Works, with instructions to consider the validity of the said by-law, and all other by-laws relating to the Street Railway Company, and the expediency of enforcing the by-law first above referred to, in view of the facts brought to the notice of the Council by the Hon. Mr. Smith, and to make such recommendations to the Council as will contribute to the safety and comfort of the public, and to report at the next meeting of this Council; and that the 83rd and 85th rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute 108, Minutes of Council, February 1st, 1886.)

CXIII.

In Council :—

Ald. Johnston, seconded by Ald. Jones, moves that the City Solicitor be instructed to report to the Committee on Works at its next meeting if there has been any agreement with the Street Railway Company and the City as to their issuing transfer tickets from the Queen street west line to the Queen street east line, which was carried.

(Minute 155, Minutes of Council, February 8th, 1886.)

CXIV.

Report No. 2 of the Committee on Works.

STREET CAR SERVICE.

Your Committee begs to report that it has considered a petition of John L. Playter and others, praying that the Toronto Street Railway Company be notified and required to lay down and operate its tracks as follows :—From the Union Station by way of Simcoe street, Adelaide street, Victoria street, Wilton avenue, River street, Gerrard street and Broadview avenue to Danforth avenue.

Your Committee therefore recommends that the prayer of the petitioners be complied with, and that the Street Railway Company be notified accordingly to lay down and operate such route within the time required by the terms of its contract with the City in that behalf.

Committee Room, Toronto, February 15th, 1886.

(Appendix 58 to Minutes of Council, 1886.)

The Council resolved itself into Committee of the Whole on Reports Nos. 3 and 4 of the Executive Committee, Ald. Crocker in the chair.

The Committee rose. Ald. Crocker reported that the Committee had adopted Report No. 3 with the following amendments : [None relative to this matter.—Ed.]

The amendments were concurred in.

Upon the question that Report No. 3 as amended be adopted, it was carried.

(Minute 201, Minutes of Council, February 15th, 1886.)

CXV.

Report No. 3 of the Committee on Works.

Your Committee begs to report that it has considered the resolution of Council adopted at its meeting on the 1st instant, and referred to it for a report, with reference to the expediency of enforcing the by-law providing for the placing of conductors on one horse street cars. After a careful consideration of the matter your Committee begs to recommend to the Council the advisability of repealing the said by-law.

Committee Room, Toronto, February 13th, 1886.

(Appendix 94 to Minutes of Council, 1886.)

The Council resumed Committee of the Whole on Report No. 6 of the Executive Committee, Ald. Denison in the chair.

The Committee rose. Ald. Denison reported that the Committee had adopted the

report with the following amendments: striking out Report No. 3 of the Committee on Works, having reference to the expediency of enforcing the by-law providing for the placing of conductors on one horse street cars.

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute 238, Minutes of Council, February 19th, 1886.)

CXVI.

In Council :—

His Worship the Mayor, in reply to an enquiry from Ald. James as to what steps had been taken to enforce the by-law requiring the placing of conductors on all street cars, stated that he had looked into the matter and had decided that inasmuch as the City Solicitor did not approve of the by-law in question, it would not be fair either to the City or the Solicitor to ask the latter to enforce the provisions of the said by-law. He therefore desired to inform the Council of his intention to employ other counsel in the matter, which would involve an expenditure of money, in order to afford the Council an opportunity of objecting should they see fit. After some remarks from Ald. James to the effect that the Solicitor should do the work, which was not sustained, the matter was allowed to pass without further objection.

(Minute 273, Minutes of Council, March 4th, 1886.)

CXVII.

In Council :—

Ald. James, seconded by Ald. Saunders, moves that His Worship the Mayor be and he is hereby authorized to take the necessary steps to test the by-law requiring the Toronto Street Railway Company to place conductors on all street cars, and that the 33rd and 35th rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute 338, Minutes of Council, March 12th, 1886.)

CXVIII.

In Council :—

Ald. James, seconded by Ald. Baxter, moves that the minutes of the 4th inst. be amended by striking out Minute No. 273, having reference to the employment of counsel in connection with the enforcement of the by-law requiring the Toronto Street Railway Committee to place conductors on all street cars, which was carried.

(Minute 238, Minutes of Council, March 15th, 1886.)

CXIX.

Report No. 10 of the Committee on Works, 1886.

NEW RAILWAY TRACKS.

It is recommended that the Toronto Street Railway Company be notified that it is required to extend a branch of its Queen street tracks along Bathurst street to Arthur street, thence along Arthur street to Dundas street; said new route to be from the St. Lawrence Market to Dundas street.

Committee Room, Toronto, May 4th, 1886.

(Appendix 388 to Minutes of Council, 1886.)

In Council.—

The Council resumed Committee of the Whole on Reports Nos. 14 and 15 of the Executive Committee, Ald. Hunter in the chair.

The Committee rose. Ald. Hunter reported that the Committee had adopted Report No. 14 with the following amendments: [None relative to this matter.—Ed.]

The report was received.

Upon the question that Report No. 14 as amended be adopted, it was carried.

(Minute 576, Minutes of Council, May 11th, 1886.)

CXX.

In Council:—

Ald. Macdonald, seconded by Ald. Low, moves that the City Solicitor be directed to publish (in pamphlet form) the agreement between the Corporation and the Toronto Street Railway Company, together with the Charter of the Company and all Statutes and By-laws relating in any way to the Company, and that copies of the same be supplied to the members of the Council and any citizen or citizens who may require them, and that the Executive Committee be directed to report the necessary funds for the purpose.

Ald. Defoe, seconded by Ald. Crocker, moves that the foregoing motion be referred to the Executive Committee for consideration, which was carried.

(Minute 605, Minutes of Council, May 17th, 1886.)

CXXI.

In Council:—

The Mayor submitted the following Message and Enclosures:—

MAYOR'S OFFICE,

TORONTO, June 7th, 1886.

Gentlemen of the Council:

I deem it necessary to make certain statements and bring down certain papers regarding a letter of complaints and claims read to-night from the Toronto Street Railway Company.*

* This letter cannot be found, and the Street Railway authorities are unable to furnish a copy.—Ed.

The complainant commences with the absurd proposition that it was the intention of an individual to confiscate the property of a company incorporated by the Legislature, assuming that he had the power of a Legislature. I think it is not necessary to give any further attention to such an absurdity. When I came into office I discovered, by accident, that the Street Railway Company were soliciting legislation of a character that would have made the option which the City of Toronto have of assuming possession of the railway in the year 1891 practically valueless. The legislation proposed to confer upon the Street Railway Company the power to construct a system of railways around the City in such a way that it would have made it impossible for the City to deal at the end of the term of the Street Railway Company's agreement with any company other than this Street Railway Company. This attempt I defeated: and I append the two bills, the one proposed and the one passed, that the contrast may be seen. The clause of the agreement of the City with the Street Railway Company, giving the City power to assume the property of the Company, reads as follows:

"Eighteenth. The privilege granted by the present agreement shall extend over a period of thirty years from this date, but at the expiration thereof the Corporation may, after giving six months' notice prior to the expiration of the said term of their intention, assume the ownership of the railway and all real and personal property in connection with the working thereof on payment of their value, to be determined by arbitration; and in case the Corporation should fail in exercising the right of assuming the ownership of the said railway at the expiration of thirty years as aforesaid, the Corporation may, at the expiration of every five years to elapse after the first thirty years, exercise the same right of assuming the ownership of the said railway, and of all real and personal estate thereunto appertaining, after one year's notice, to be given within the twelve months immediately preceding the expiration of every fifth year as aforesaid, and on payment of their value, to be determined by arbitration."

The meaning of this is that within four and one-half years time the City may, by giving notice, assume possession of the Street Railway Company on payment of the value of their plant and buildings and the cost of their road-bed, say in all \$300,000, at the present time. As this property is practically worth three million dollars to-day, I do not propose to allow the Street Railway Company to do anything which may affect in any way the valuable privilege which this City most certainly must exercise. I am determined to keep the City's option unthrottled, (if that is what Mr. Smith means by confiscation,) and I propose that the City of Toronto shall exercise the rightful power they have by their agreement with Mr Smith's Company.

The Street Railway Company notify the City that they will look to them for the payment of all losses and damages sustained by the late strikes. I had prescience enough to gather from Mr. Smith's first remarks, when he looked out his men at the time of the first strike, that this was the calculation of his company. It was for that reason I wrote the letter which has been so freely commented on, putting the responsibility of the difficulty where it belonged, and, as I believe, thereby freeing the City from any legal responsibility in the matter. Mr. Smith did not rest with his first effort to saddle the responsibility on the City. He informed a

deputation of Aldermen at the time of the first strike that he had handed over the railway to the Police Commission to be run by them. The Police Commission immediately, at my instance, by the hands of its Chairman, wrote a letter, which I append, and which disposed of that particular effort on the part of Mr. Smith to saddle the City with the expense of his difference with his men again at the time of the second strike. The Superintendent of the Company made the statement, (which got into the public press,) that the Police Commission had given instructions to the Street Railway Company not to run in the evening. With regard to that point, I am glad to say that the statement was incorrect, as the letter from the Chief Constable will show that the cautious policy of the Police Commission was continued in this matter.

I believe that I have practically succeeded in keeping the City free from any responsibility for damages on Mr. Smith's part for anything connected with the late strike; and I am also glad to be able to append the Solicitor's opinion that, so far as this Corporation is concerned, they have no responsibility in connection with the busses that are at present being run. I also append the clause of the agreement with the Street Railway Company, which speaks for itself:

"Fifth. That the gauge of the said railways shall be such that the ordinary vehicles now in use may travel on the said tracks, and that it shall and may be lawful to and for all and every person and persons whatsoever to travel upon and use the said tracks with their vehicles, loaded or empty, when and so often as they may please, provided they do not impede or interfere with the cars of the party of the second part running thereon, and subject at all times to the right of the said party of the second part, his executors, administrators and assigns, to keep the said tracks with his and their cars when meeting or overtaking any other vehicle thereon."

I desire now, (having the opportunity) to impress it strongly on the Council that they ought to consider without delay, giving ample time for discussion, the method by which they will be prepared to deal with the Street Railway when the time comes for us to assume possession of its effects, so that there shall not be any possibility of any hitch, or unfortunate accident, or legal quibble, coming between the City and the possession of a property of immense present and probably still greater future value.

W. H. HOWLAND,

Mayor.

ENCLOSURES.

"A."

ORIGINAL BILL AS ASKED FOR BY THE STREET RAILWAY COMPANY

An Act to amend the Acts relating to the Toronto Street Railway Company.

WHEREAS, the Toronto Street Railway Company has by its petition prayed for certain amendments to its Act of Incorporation, and it is expedient to grant the prayer of the said petition;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

I.

Section 4 of the Act of the late Province of Canada, passed in the 24th year of Her Majesty's reign, chapter 88, is hereby amended by inserting between the sixth and seventh words in the ninth line thereof the words, "steam, electricity, cables, machinery or other motive power."

II.

When and so often as the Council of the Corporation of the City of Toronto or the Council of any of the adjoining municipalities mentioned in the said Act of the said Toronto Street Railway Company shall mutually agree thereto, it shall and may be lawful for such Council and the said Company upon such terms as may be agreed upon between them, to make and enter into agreements for the running of the cars of the said Company or some of them over the tracks of the said Company or some of them upon Sundays or portions of Sundays, notwithstanding anything in the said Act or the By-law therein referred to or in any other Act contained.

III.

All such provisions of the Acts of Parliament relating to the said Company as confer rights and powers upon the said Company in respect of Municipalities immediately adjoining the City of Toronto, and as invest the said Municipalities with authorities or powers with regard to the said Company or its undertaking, shall be held to extend so as to confer such rights and powers upon the said Company in respect of Municipalities which since the passing of the said Acts or any of them, have been or which hereafter may be erected or formed adjoining the said City of Toronto and so as to confer such rights or powers upon the said Company in respect of Municipalities adjoining such Town or Village Municipalities as may themselves adjoin the said City of Toronto, and so as to invest the same Municipalities with the like authorities and powers in regard to the said company and its undertaking as are by the said Acts vested in Municipalities immediately adjoining the said City of Toronto.

IV.

Section 14 of the said Act passed in the 24th year of Her Majesty's reign, chapter 88, is hereby amended by adding thereto the words following: "and may levy by special general assessment upon the ratepayers, notwithstanding any previously existing By-law or By-laws passed under section 620 of 'The Consolidated Municipal Act, 1883,' the cost and expense incurred in performing and carrying out such agreement or covenants."

"B."

ACT AS PASSED BY THE LEGISLATURE.

An Act to amend the Acts relating to the Toronto Street Railway Company.

WHEREAS, the Toronto Street Railway Company has by its petition prayed for certain amendments to its Act of Incorporation, and it is expedient to grant the prayer of the said petition;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In the event of the construction of any railway or tramway upon the Island in front of and forming part of the City of Toronto, the said the Toronto Street Railway Company shall have, but only in respect of the said Island, such and the like powers with regard to the description or kind of motive power to be used upon such railway or tramway as are by the Act 40 Vic., cap. 84, conferred upon the Metropolitan Street Railway Company of Toronto.

2. All such provisions of the Acts of Parliament relating to the said Company as confer rights and powers upon the said Company in respect of municipalities immediately adjoining the City of Toronto, and as invest the said municipalities with authorities or powers in regard to the said Company or its undertaking shall be held to extend so as to confer such rights and powers upon the said Company in respect of the Town of Parkdale and so much of the Township of York as lies between the said Town of Parkdale and High Park, in the said Township of York, and so as to invest the said Town of Parkdale and the said Township of York with the like authorities and powers in regard to the said Company and its undertaking as are by the said Acts vested in municipalities immediately adjoining the said City of Toronto.

3. The Municipality of the Town of Parkdale may levy by special general assessment upon the ratepayers, notwithstanding any previously existing By-law or By-laws passed under section 620 of the Consolidated Municipal Act, 1888, or any similar section of any former Act, the cost and expense incurred in performing and carrying out such agreement as the said Town of Parkdale may, in pursuance of the said Act 24 Vic., cap. 83, and of this Act, enter into with the said Company.

"C."

LETTER FROM THE MAYOR TO THE PRESIDENT OF THE TORONTO STREET RAILWAY COMPANY.

SIR,—Having noticed in the public press that you propose to claim damages for loss of time in running your cars, and also for any possible damages by other means occurring by reason of the lock-out of your employees, I desire to inform you on the part of the City that I not only deny all responsibility in the matter; but I now notify you that I shall hold you to a strict accountability for,—

(1) Your violation of clause 10 of the agreement between Alex. Easton and the City, cited in section 16 of your charter, which requires you to run your cars for fourteen hours per day in winter, and at intervals of not over thirty minutes.

(2) For any injury that may be inflicted on any citizen or any policeman by reason of or in connection with disturbances arising out of your action towards your employees.

(3) For any injury to the property belonging to the City or any citizen arising from the same cause.

I do this on the following grounds:—

First, because you are not in the position of an ordinary employer of labour. You have a trust from the City in occupying its streets, and have undertaken to provide a certain convenience for the citizens in return, from which convenience you have by your own act withdrawn.

Secondly, you have by your own act produced this trouble, having in the face of the knowledge of the result (as your application for police protection in advance of your act proves) deliberately locked out a large body of your men, not on account of any claim for higher wages or shorter hours, but simply for exercising a legal liberty in joining a lawful body or society. This action of yours having produced the difficulty and being the cause of the annoyance under which the citizens are laboring, I hold you and your Company responsible for it and hereby demand that you shall at once restore to the City the order which existed, and to its citizens the convenience they have a right to, as they existed before your action disturbed them.

I am, Sir,

Your obedient servant,

W. H. HOWLAND,

Mayor.

"D."

LETTER FROM CHIEF OF POLICE.

CHIEF CONSTABLE'S OFFICE,

Toronto, June 8rd, 1886.

To His Worship W. H. Howland, Esq., Mayor of Toronto :

DEAR SIR,—In reference to your enquiry as to the position taken by the Police Commissioners towards the Toronto Street Railway Company during the recent strikes, I am instructed by the Chairman of the Board to enclose herewith a copy of a letter, dated March 13th, addressed by him to the Hon. Frank Smith. I beg further to say that no action has been taken by the Police Commissioners or by myself as Chief Constable, either before or since the writing of the enclosed letter, which has in any way been a departure from the attitude assumed by the Commissioners, and vindicated in that letter.

I have the honor to be, Sir,

Yours respectfully,

FRANK C. DRAPER,

Chief Constable.

"E."

LETTER FROM CHAIRMAN OF POLICE COMMISSIONERS.

CHIEF CONSTABLE'S OFFICE,

Toronto, March 13th, 1886.

To Hon. Frank Smith, Toronto :

MY DEAR SIR,—It has come to the knowledge of the Police Commissioners that you have stated that this Board has taken the management and running of the Toronto Street Railway. This must be a misunderstanding. The minute of the

action of the Police Board is that "the Chief Constable go down to-morrow morning with such force as is necessary to protect the Company in their efforts to start their cars running and continue the same." We have endeavoured to carry out this decision to-day, but I must disclaim any intention on the part of the Board to assume any greater responsibility or control over your affairs than over the affairs of any other citizen who complains of being interrupted in the enjoyment of his civil rights by force and violence. We will endeavour to protect your Company and all other ratepayers who properly make any claims upon the police for protection.

Yours truly,

JOSEPH E. McDUGALL,

Chairman Board Police Commissioners.

"F."

LETTER FROM THE CITY SOLICITOR.

CITY SOLICITOR'S OFFICE,

Toronto, June 8rd, 1886.

TO TORONTO STREET RAILWAY COMPANY.

DEAR MR. MAYOR,—At your request, I have considered the enclosed letter from the President of the Toronto Street Railway Company protesting against the City allowing the busses to run in opposition to the Street Railway. In answer to your questions as to the liability of the City, I beg to state that the City Council has nothing to do with the matter of permitting or refusing permission to the buss line. If the owners of busses choose to take out a license under the By-law passed by the Board of Commissioners of Police, they can run their busses upon such streets and in such manner as they may be authorized by their license. The By-law No. 7 passed by the Board of Commissioners of Police, a copy of which I enclose herewith, with clauses marked, is quite explicit as to the City being held liable for allowing other parties to carry passengers over the streets of the City of Toronto by means of conveyances other than Street Railway cars. I am of opinion that there is nothing in the claim.

Yours truly,

W. G. McWILLIAMS.

W. H. Howland, Esq., Mayor of Toronto.

CXXII.

In Council:—

Ald. Carlyle, seconded by Ald. Jones, moves that the President of the Toronto Street Railway Company be requested to extend its tracks on Broadview Avenue, from Queen street to Danforth Avenue, and to establish a route for the accommodation of citizens by running the cars from the said Danforth Avenue to the Union Station by way of Queen street, Yonge street and Front street; and further, that the said Toronto Street Railway Company be notified of the City's

intention to block-pave Broadview Avenue from Queen Street to Danforth Avenue, and that the said Company will be assessed for its share of that portion of the roadway occupied by its tracks on Broadview Avenue, between Queen Street and Danforth Avenue, in the event of the Company electing to construct and extend the said railway tracks, and that the 33rd and 35th rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute 799, Minutes of Council, June 21st, 1886.)

CXXIII.

Report No. 22 of the Committee on Works.

TORONTO STREET RAILWAY TRACKS.

It is recommended that the President of the Toronto Street Railway Company be requested to extend his tracks across the Queen street east bridge, and operate one line of cars from the Don Bridge to Greenwood's line.

Committee Room, Toronto, September 21st, 1886.

(Appendix 961 to Minutes of Council, 1886.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 24 of the Executive Committee, Ald. Crocker in the chair.

The Committee rose. Ald. Crocker reported that the Committee had adopted the report with certain amendments: [*None relating to this matter—Ed.*]

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute 1,008, Minutes of Council, September 27th, 1886.)

CXXIV.

To the Council of the Corporation of the City of Toronto :

The Executive Committee beg to submit their Report No. 27 :

Your Committee, referring to the motion introduced by Mr. Alderman Macdonald on 17th May last, directing the City Solicitor to publish in pamphlet form the agreement between the Corporation and the Street Railway Company, the charter of the said Company together with all Statutes or City By-laws in any way relating to such Company, which was referred to the consideration of your Committee, beg to report that the City Clerk has ascertained that the cost of such printing would be \$100 for one hundred copies, and \$150 for 500 copies. In view of the state of the appropriation for printing for the current year, which is almost exhausted, your Committee cannot report funds for this purpose.

Committee Room, Toronto, October 21st, 1886.

(Appendix 1051 to Minutes of Council, 1886.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 37 of the Executive Committee, Ald. Allen in the chair.

The Committee rose. Ald. Allen reported that the Committee had adopted the report with the following amendments: [*None relating to this matter—Ed.*]

The report was received.

Upon the question that the report as amended be adopted,

Ald. Macdonald, seconded by Ald. Hunter, in amendment moves that the report as amended be not now adopted, but that it be further amended by striking out all after the words "five hundred copies" in the eighth line of the clause of Report No. 37 of the Executive Committee, having reference to the printing of all documents and papers relating to the Toronto Street Railway Company, and inserting the following in lieu thereof, "your Committee beg to recommend that the Council direct the City Solicitor to compile and cause to be printed five hundred copies," upon which the yeas and nays were taken as follows:

YEAS—His Worship the Mayor, Messrs Allen, Barton, Bonstead, Carlyle (St. Andrew's Ward), Fleming, Hunter and Macdonald—8.

NAYS—Messrs Carlyle (St. Thomas Ward), Defoe, Drayton, Frankland, Galley, Irwin, Johnston, Jones, Low, Pepler, Piper, Roaf, Saunders, Steiner, Turner, Verral, Walker and Woods—18.

Decided in the negative by a majority of 10.

Upon the question that the report as amended be adopted, it was carried.

(Minute 1092, Minutes of Council, October 25th, 1886.)

CXXV.

To the Council of the Corporation of the City of Toronto:

The Executive Committee beg to submit their report No. 38.

Your Committee, on the advice of the City Solicitor, recommend that the sum of \$300, to meet disbursements, witness fees, etc., be paid over to Messrs. Robinson & O'Brien, Solicitors for the City in the suit now pending between the City and the Toronto Street Railway Company, to enforce the provisions of the by-laws relating to conductors on all street cars.

Committee Room, Toronto, November 4th, 1886.

(Appendix 1102 to Minutes of Council, 1886.)

In Council :—

The Council resumed Committee of the Whole on Reports Nos. 38 and 39 of the Executive Committee, Ald. Boustead in the chair.

The Committee rose. Ald. Boustead reported that the Committee had adopted Report No. 38 with the following amendments; [*None relating to this matter.—Ed.*]

The report was received.

Upon the question that Report No. 38 as amended be adopted it was carried.

(Minute 1151, Minutes of Council, November 8th, 1886.)

CXXVI.

Report No. 13 of Local Board of Health.

Your Board beg to report that they are in receipt of a very largely signed petition of property holders, ratepayers and others, residing on Scollard street, complaining of the great nuisance and discomfort caused by the stables of the Toronto Street Railway Company, situated on that thoroughfare.

They (the petitioners) state that the offensive odors are chiefly caused by the depositing of manure around the building, the carting away of manure past their houses, and the grooming of horses at the doorway of the stables.

The petitioners further intimate that the kicking of horses during the night, and the continual standing of from two to four horses on the corner of the said street and Yonge street, create a constant amount of filth and bad odor, and from the causes above named a depreciation in the value of property is the result.

Your Board, after an earnest consideration of the above facts, strongly recommend that the Medical Health Officer be requested to at once cause the nuisances above complained of to be abated, and the said Street Railway Company be instructed to have their stables above situated placed in a proper sanitary condition.

Board Room, Toronto, November 16th, 1886.

(Appendix 1,188 to Minutes of Council, 1886.)

In Council :—

The Council resolved itself into Committee of the Whole on Report No. 40 of the Executive Committee, Ald. Carlyle (St. Andrew's Ward) in the chair.

The Committee rose. Ald. Carlyle reported that the Committee had adopted the report with the following amendments: [*None relating to this matter.—Ed.*]

The report was received.

The amendments were concurred in.

The report as amended was adopted.

(Minute 1,180, Minutes of Council, November 22nd, 1886.)

CXXVI.

In Council :—

His Worship the Mayor read to the Council a message stating the result of the suit brought by the City to compel the Toronto Street Railway to place conductors on all one horse street cars, and the necessity of at once taking action in the matter of the repairs to the roadways on all streets occupied by the tracks of the said company.

(Minute 1165, Minutes of Council, November 22nd, 1886.)

The Message and relative Enclosures are as follows :—

Mayor's Office, Toronto, November 22nd, 1886.

Gentlemen of the Council :

I have pleasure in informing you that the suit against the Street Railway Company to enforce the by-law regarding conductors on one horse cars has been decided in the City's favor. I bring down herewith the Solicitors' letter, and a copy of the judgment itself, by which it will be seen that not only is our right affirmed to pass such by-law under our agreement, but the learned Chancellor held that the by-law itself was *reasonable*, and that while giving full weight to the defendant's argument about the expense, he considered that there was no such unreasonable burden imposed on the Company as to induce the Court to hold its hands ; as the Company will have to pay the costs of suit the City will not be at any greater expense in the matter than if their own solicitor had undertaken the case.

I find it necessary to call the attention of the Council to the failure of the City Solicitor to get the case to trial to recover the cost of the repairs made to the block pavements on those portions of streets occupied by the Company's tracks. The instructions were given by Council to proceed nearly seventeen months ago. The Solicitor assigns the cause of the delay to reasons of a private and personal nature, which I prefer he should himself explain.

My object in mentioning the matter at this time is to call your attention to the extreme urgency and the need for immediate action. I have before me blocks taken from between the tracks on Yonge street, which are worn down in parts to two inches in thickness. If the pavement between the tracks is not taken up and a new one laid as quickly as it can be done, we will not get through another year without having our main thoroughfares rendered nearly impassable.

If the Council, in view of the urgency, choose to put into my hands the conduct of the suit against the Company, I will venture to state that there will be no delay beyond what the law permits in determining the issue.

I may add that a number of claims and suits are being brought against the City

for damages arising out of the condition of the streets travelled by the railway, and every day's delay adds to the losses sustained by the City in this particular alone.

W. H. HOWLAND,

Mayor.

"A."

TORONTO, November 22nd, 1886.

CITY OF TORONTO V. TORONTO STREET RAILWAY.

W. H. Howland, Esq., Mayor of Toronto :

DEAR SIR,—The suit of the City of Toronto against the Street Railway Company to enforce the by-law passed in December, 1882, to compel the defendants to place conductors on all their cars, has been heard before the Chancellor. Judgment was delivered on Saturday in favor of the City, with costs, on all points brought under discussion. An injunction may issue in ten days, thus giving the company sufficient time to place conductors on all their cars, with a right to the company to apply for a further extension of time upon cause being shown for its necessity. The case occupied the best part of seven days, and a large number of witnesses were examined on both sides. The effect of the judgment may be summarized as follows :

1. The Corporation had authority to pass the by-law in question.
2. Nothing passed between the Corporation and the Company whereby they were debarred or stopped from passing the by-law or from enforcing it, and there was no agreement or understanding between the Corporation and the Company that one horse cars should be run, or that no conductors were requisite.
3. There was no breach of faith on the part of the Corporation either in passing the by-law or seeking its enforcement, and there was no change of position as between the Corporation and the Company that should induce the Court to hesitate in enforcing the by-law.
4. The evidence showed that the by-law was reasonable.
5. The Chancellor thought that on the evidence the by-law was passed *bona fide*, and not owing to pressure of any labor organizations or with any sinister object.
6. Although the Chancellor felt that there was much weight in the defendants' argument, on the ground of expense to the Company and that it was impossible to give as frequent a service with conductors as without, he considered that on the evidence there was no such unreasonable burden placed upon the Company as to induce the Court to hold its hand.

We enclose you the note of the Chancellor's judgment, which was delivered verbally.

Yours truly,

ROBINSON & O'BRIEN,

Barristers, etc.

"B."

SATURDAY, NOVEMBER 20th, 1886.

JUDGMENT.

BOYD, C.—It does not appear to be needful for me to hear further argument or to delay to look into these authorities which have been cited, because none of them governs this case in its circumstances. The nearest is the Brooklyn case, which has been referred to; but that is widely distinguishable, from the fact that there was no preceding agreement between the parties who were litigating, which is an important element in this case. The case of the Street Railway has been argued in a very careful way by a gentleman who has been long concerned with their interests, and who has not overlooked any point that could make in their favor. His argument has been an exhaustive one, but it has not shaken the opinion I entertained early in the case, that the decision could be only one way. The lines of division which he has followed in his argument I may properly follow in stating the reasons why I think judgment should be given for the City of Toronto. He argued first of all the broad question which of course lies at the root of everything—as to the validity of this by-law. He first argued generally that in form it is improper, and that in substance it transcends the jurisdiction of the City Council. He argued as his fourth point (but the general argument as to the validity of the by-law may be conveniently embraced with this fourth point)—unwarrantable interference with the domestic affairs of the company. Then he proceeded upon the facts to argue that the by-law should not be given effect to by the Court, because it was not a reasonable one; first, because it was not a reasonable one as regards the municipality and the public; secondly, as regards the Company. These divisions, I think, embrace all the aspects in which this case can be viewed. They were argued in that way, and I don't know of any other which can be entertained or which is covered by the pleadings.

Now, as to the first, I quite agree with the argument of Mr. Shepley, that the rights of the parties must be measured in this case by the original agreement with the first proprietor of the road and the statute which legalized that agreement. The agreement made in 1861 with Mr. Easton is one which it is to be observed was afterwards declared by the Legislature to be a valid and binding agreement. So that all the clauses of the agreement of the 26th March, 1861, are to be read as constituting not only the contract between the parties but also the powers which are entrusted by the Legislature to the City Council; because in validating the conditions, clauses and terms of this contract between the parties it gave legislative sanction to what had been done, in the same way as if the whole had been embodied in an Act of Parliament. Now it is to be observed that this provides that Alexander Easton, the first proprietor, was authorized by the first clause, or by the first resolution rather, of this agreement, to lay down street railways in the City; such railways being of approved construction and to be operated under such regulations as should be necessary for the protection of the citizens. There was a qualified right, therefore, given him to lay down the work under such regulations as might be necessary for the protection of the public. This is developed and the meaning of it ascertained in the sixth sub-section of the covenants. One has to look at all the parts of this agreement and collate them so as to ascertain precisely the meaning. Reading then the sixth clause, it appears that Mr. Easton undertakes to operate the railway and cause the same to be worked under such regulations as the Common Council of the City of Toronto

may deem necessary and requisite for the protection of the persons and property of the public. It is very important to observe, however, that the regulations are such as the City of Toronto may deem necessary. The railway is not to judge, but the City; the Council are to judge as to what is necessary and requisite for the protection of the persons and property of the public. Of course there is always the question of reason and propriety; the Council must not act in an absolute, arbitrary and tyrannical way; but if with any show of reason they act, it seems to me they are the parties to judge what regulations are necessary for the protection of the persons and property of the public. It is not only as to passengers this is directed, but also as to the public who use the street—a general power given to pass all regulations necessary for that purpose. It is a general power all through; the only limitation is that “such regulations shall not infringe upon the privileges granted by the said resolutions.” It is said further in the first clause of the by-law which was passed after the agreement was validated by the Legislature, “that Alexander Easton is authorized to lay down street railways,” and so forth, “and to work the same under the provisions and restrictions in the said agreement contained and such other regulations as are herein set forth or may from time to time be deemed necessary by the said Council for the protection of the citizens of Toronto.” That shows that the regulations were to be made by the City for the protection of the citizens, not at once, but from time to time as the interests of the City required. As the growing population and growing needs of protection increased, the City was enabled to pass regulations from time to time for that purpose. Then, in the 16th clause of the Statute, we find that after declaring that the said recited agreement shall be valid and binding, it gives power to the City to pass any by-law or by-laws for the purpose of carrying into effect the said recited agreement. Their power was not exhausted by the passage of one by-law, as I read this; they could from time to time pass by-laws for the purpose of carrying into effect the said recited agreement; and the agreement itself speaks of regulations for giving effect to it, and the statute empowers the municipality to pass by-laws for the purpose. So that even as a strict matter of form I don't think it can be said that this by-law in that sense is *ultra vires*. The Legislature has entrusted the power to the City—to pass by-laws to carry into effect the recited agreement. These are the powers under which this by-law is passed. The only limitation on these powers, it is to be observed, is that the regulations should not infringe upon the privileges granted by the said resolutions. Now what privileges are granted by the resolutions? The power to work the railway; the power to work it with conductors as well as drivers. The direction that not only drivers but conductors shall be placed there to take charge of the cars. The by-law in question is one which requires conductor as well as driver. This by-law is not foreign to the text of the agreement. It is not extraneous matter brought in and thrust on the Street Railway Company, or superinduced upon the original contract; it is subject matter which is woven in the very text of this agreement. This agreement provides and contemplates that there shall be conductors and drivers. Then it is said that this is satisfied by having one person who drives the single horse car, who is the conductor. Mr. Woodworth gave evidence that he would call that man a conductor. That is not the way in which a Court would construe the agreement. When this agreement was passed there was no such thing as a one-horse car. The only thing known was the two-horse car, in which there was always a driver and a conductor; the driver having a distinct function, the con-

ductor having a distinct function. And I take it that in these regulations of the Street Railway Company, which were submitted to the Council as a pre-requisite to enable the Company to work under them in conducting the road; in these regulations of the Street Railway Company rules were provided for the government of conductors and drivers upon the railway. The original rules cannot be found; but it is said by Mr. Smith that these rules embodied, as I understand him, the only rules the Company ever had from the beginning, which were added to from time to time, and in 1880 reduced to their present shape. I have no doubt that in these we find the original rules interspersed—although we cannot exactly identify them—interspersed with some rules passed afterwards, when one-horse cars came into use. In these rules and regulations of the Toronto Street Railway Company, which I take it were substantially in force from the first, there were rules for the guidance of conductors, giving them a distinct set of duties, which appear to be, looking at these rules, quite enough for any men to perform. Then there were rules for the driver, which seem to be quite sufficient to occupy the attention of one man. And judging by these rules, the gloss that is now sought to be put upon this agreement does not appear to have occurred to the contracting parties, because when they speak of these men in 1880 they are not spoken of as “conductors” of the one-horse cars—Rules 13 and 14—they are spoken of as the “drivers” of one-horse cars. “The drivers of one-horse cars will use great care, and see that the passengers deposit their fares,” and so on; and further, in that line, showing that this is an after-thought in the pamphlet submitted to the City Council by the Street Railway Company in March, 1883, the title of which is, “Information respecting one-horse cars without conductors.” Manifestly, they understood “driver” to mean one thing, and “conductor” another. And so throughout this pamphlet these cars are spoken of as “street cars without conductors”; and a gentleman who has a letter in it speaks of the “conductorless”—coining a word for the purpose—“one-horse cars.” So that, upon all principles of construction, when this agreement speaks of “drivers and conductors,” those are taken to mean, and the parties themselves meant, two officers or agents, one of whom is to drive the car, the other to conduct the car; one to discharge the duties of driver, the other to discharge the duties of conductor. The agreement goes so far in one of its clauses as to point out amongst the duties of conductor one which could not be performed by the driver of a one-horse car without extreme inconvenience to the passenger. For instance, in dark, cold, or stormy weather, when it is necessary to have the names of streets called out, it would be a most inconvenient thing for the driver at every street to open this front door to shout the name of the street through the car—great inconvenience to the passengers, and the liability to take colds and the like. It was certainly not contemplated when this original agreement was entered into that the driver should do any such work. It was the place of the conductor at the rear of the car. In the sixth paragraph, wherein the Company undertake to employ careful, sober and civil agents, conductors and drivers, the words “conductors and drivers” do not mean one man; they mean two men; the agreement means two men on each car; and the company frame their rules, showing what the duties were of these several persons, upon which the statute was satisfied, and upon which the right to exercise this franchise arose. So, then, it cannot be said that this by-law dealing with the conductors is one which infringes upon the privileges granted by the resolution. I think it does not infringe upon it. It merely makes distinct that which would be rather a matter

of inference in the original agreement. It makes distinct in the changed conditions, in the changed form of circumstances which arose afterwards when one-horse cars were put on, that the City, although sanctioning one-horse cars, which are more economical in some respects, did not intend in the long run to dispense with conductors being on those cars. It may be at first that they winked at it, and allowed them to be run with only one man, but did not resign their power to afterwards enforce the regulation when circumstances arose to make it desirable. It seems to me that that is an answer to the whole argument addressed to the invalidity of this by-law, based on these American authorities, that this by-law interferes with the domestic concerns of the Company. If it does interfere with the domestic concerns of the Company, it does not do so in any unwarrantable sense. It does so because the Legislature has seen fit to entrust to the Municipality the right to do so by sanctioning this agreement, and giving it the force of law. It is just the same as if it had been in the statutes. It is delegated power given by Parliament to the City Council to enact such laws as may be necessary for the proper working of that railway in order to the due protection of the persons and property of the public. It was a piece of delegated legislation which it seems to me is *intra vires*, within the powers of the municipality. One has to look at the original Charter to see if the Municipality had transcended these powers. It seems to me they have not so acted in passing this by-law.

Then upon the evidence it is argued that the by-law is not a reasonable one. The pleading on that point puts it that the by-law was not passed for its ostensible object, but for other objects, and that it is oppressive, unfair, inequitable, unjust, and infringes upon the privilege, and so on. If the evidence made that plain, I don't say but that the Court might interfere, even at this late day; even although the by-law has been so far acquiesced in. The court could not abstain from not putting forth its hand to enforce the specific performance of the by-law, and the evidence is to enable the Court to determine whether the by-law within the meaning of the case is a reasonable one. I don't think it is necessary for me to balance as to the less or more of the convenience in this particular case. It is not for me to say on the one hand that the City Council did not act as the court would have acted in coming to this conclusion. I am not obliged to go so far as that. But looking at the whole of this evidence, it seems to me that there are very strong and sufficient reasons for saying that the City Council were justified in taking the action they did.

Mr. Shepley refers to two points which, as he says, demonstrate that this by-law is not required for the protection of the public. The first is in regard to a record of accidents which is kept by the Street Railway Company, showing that the number of accidents has been more on the two-horse cars than on the one-horse cars. There is a great deal to be said on that point. A good deal of comment might be made on that record, recalling the observation made by Mr. Lefroy the other day, that these statistics may be in one sense fair and yet kept with a bias. The information as to accidents upon the one-horse cars is derived from the drivers. The drivers are responsible for these accidents, and they may very easily be supposed to overlook certain things which disinterested persons might call accidents; the drivers might not consider them accidents at all. So that looking at the register of accidents filed by the company, and seeking to deduce from

that that the by-law is unreasonable, and not required for the protection of the public, would be, I think, rather a violent inference. One has rather to look at the other class of evidence referred to, the findings by the coroner's juries. It seems to me that these afford reasons for the action of the Council, and they afford reasons for enabling me to say that this by-law was not enforced with any sinister object. It is impossible for me upon this present evidence to give effect to the suggestion that the Knights of Labour or any other irresponsible people are pulling the strings in this case. We have had Aldermen come here, giving evidence straightforwardly, having no objects to serve, and they think it is necessary for the protection of the public to have the by-law enforced, and with that view they urge this action on the court. When we look at the history of the municipal legislation in that respect, it will supply a conclusive answer to the suggestion of any sinister object, and will show the reasonableness of the action of the Council in asking this relief. One of the earliest motions appears to have been made sometime in 1880, if I understand it, when there was an accident, upon which a coroner's jury made a report and a recommendation, which appeared in the public press, and which incited Alderman Morris, who gave his evidence here, to make a motion in December, 1880, with the view of ascertaining what were the rules and regulations of the company, and the limits of this Company's rights, and with the view of having conductors on single-horse cars. That last matter does not appear in the minutes of the Council, but it appears in the newspaper report, the *Mail*, and that report having been read to Mr. Morris he recalled the circumstances; so that we have the matter then broached in the City Council and in the City papers as far back as December, 1880, before the Knights of Labor were heard of at all; broached by Mr. Morris, actuated by philanthropic motives in that matter, and giving effect to the finding of the coroner's jury. I have it here, I think—inquest held before Dr. Riddell on the death of Mary Elizabeth Gurd—and the recommendation was that the company should furnish conductors as well as drivers for all cars owned by them. This was on the 18th December; and on the 20th December, two days afterwards, was Alderman Morris' motion.

In 1882 the by-law which is the basis of this action was passed. That was before any agitation took place here of the kind alleged. That was introduced by Alderman Low. He gave his evidence, and says it was introduced also because of an accident which took place a few days before, and in regard to which the coroner's jury gave a similar recommendation. Now that by-law has not been repealed. However, the agitation in the Council has fluctuated backward and forward on this point, influenced by various reasons; the fact still remains that the by-law has not been repealed. Though suspended occasionally, and further information required, it is still an existing by-law, supported by the majority of the Council, and, therefore, one which I must give effect to. Looking at the evidence, one cannot fail to observe that there is good reason for saying, as two or three of the Aldermen said yesterday, that this by-law will tend to the protection of the public. The evidence of Mr. Geddes very much impressed me. He was a much more intelligent man than the first practical witness, Montroy, who found himself, although he was not a very stupid man, unable to get into the way of managing these one horse cars at all. Mr. Geddes was a man of a different stamp; he had been in charge of one-horse cars; and I think one could not fail to observe throughout the evidence that the duties of these men are almost too much for one man unless of exceptional capacity. It is more than any ordinary man can

be expected to do, to manage a one-horse car with all the incitements and inducements there are to divert his attention. That was put very forcibly by Geddes. It is corroborated by other evidence; but his being that of a practical man, given from his own experience, impressed me very strongly. He says that at the time he was a one-horse car driver he had to look after his horse; that of course is the primary thing, the main thing; and in fact on a properly managed railway the driver should never leave his horse under any circumstances when passengers are in the car. His first duty, his main duty, is to look after his horse. Then he has to see that the fare is paid by the passengers. That involves diverting his attention to see who gets in and who gets off; who puts the fare in the box and who does not. That involves getting the fares from the people who don't pay. Then in that case he has to leave his horse and get the fare. If he stops his horse for that purpose the danger is that he loses time; and the company are very strict, we are told, in these two matters—that no fares be lost and that good time be kept. So that the man has all these conflicting duties; has to get his fare, has to make time, has to see after his horse. He has to see that passengers on the back of the car—half-drunken, or stupid, or dishonest—pay their fares, and if necessary get the fares from them. Then he has to make change, which distracts his attention. He has to stop the car when the passengers get on and off. All these things show how easily, if he is wearied by these various duties at the end of a long day, how easily he may become somewhat careless, and an accident result.

The evidence of Alderman Harvey affected me very strongly. He had been handling passengers for many years, and was peculiarly well fitted to speak on the subject. His own experience showed how an accident might happen from the driver being overworked, his attention distracted by different things, and how the retention of the conductor or the placing of a conductor on one-horse cars would be most important for the protection of the public. It is not necessary to go any further in order to show that the by-law is a reasonable one. If it be as argued by Mr. Shepley, that the statistics show that the one-horse cars are safer and cause fewer accidents, then it only strengthens the contention of the City. If the one-horse cars are safer than the two-horse cars, they will be still more safe if they have the protection of a conductor. So much as regards the City in this matter. It does not appear to me that in view of the evidence it is unreasonable so far as the City is concerned. It appears to me further that if the by-law is valid, one that it is legal to enact, and if it were a question of reasonableness, that the question of reasonableness is one merely for the municipality to determine. Even if the case were not so strong as I find it here, there must be some want of good faith, there must be some manifest impropriety or obvious absurdity in connection with the legislation to induce the Courts to say that the action of the municipality is impertinent and ought not to be given effect to; because the agreement between the parties shows that the railway is to be worked under such regulations as the Council may deem necessary for the protection of the persons and property of the public. The President did not seem to take that view. He seemed to think that it was for the Company to work in the most economical way; and if they gave good service, such as they deemed sufficient, the Council had no right to interfere. It seems to me that the Council have the right to legislate for the benefit of the public, even if involving an addition to the expenses of the Company. The question is, is there such an onerous and grievous burden

placed by this By-law upon the shoulders of the Company that it must be deemed so oppressive that the Court on the usual principles of specific performance should abstain from enforcing it. If Mr. Shepley's argument were well founded, perhaps it might amount to that. If this involved the giving up of one-horse cars and selling the rolling stock, the acquisition of new cars and putting on of two horses, and all that, involving a large expense, estimated at about fifty thousand dollars, it would be something to make the Court hesitate. But I do not read the evidence at all in that way. The evidence of Geddes shows there is no change required in the work, no change required in the rolling stock, no change required in the horses; nothing but to put one man additional on these one-horse cars. In Belfast the cars are limited to the carriage of sixteen passengers, and there they have conductor and driver. In this City some of the one-horse cars will hold fourteen; that is Mr. Franklin's evidence. That is two less than the Belfast cars. Others are larger and will hold more; but even taking the fourteen cars against the sixteen cars of Belfast, there is nothing to cause difficulty in having conductors on the one-horse cars the same as on the two-horse cars. So that I don't think that the argument of expense is a valid one. Then there is the argument that no such benefit will arise as will counterbalance the inconvenience which will be caused by the change. That was the point which appeared to me to have the most weight; but after all I am not the person to judge about that. It is for the Council representing the people; and for the people in returning representatives to the Council to determine whether or not any such change will result from the action of the Court as will induce them to undo what is being done by this By-law. In other words it is said by the Company that if this rule is enforced of having two men on the one-horse cars it will be impossible to give as frequent a service as they now give; that the cars must be run at longer intervals. They say that there must be two-horse cars, and that with two-horse cars they can only give a twenty minutes or half-hour service, instead of a ten minutes service such as the one-horse cars give now. In the first place I don't see that it follows at all that the one-horse cars must be dispensed with. I think it is a matter of option with the Company, and not a matter of necessity. In the second place, it may be that the Company will not be able to run the cars so often. That is for the Company to determine; and if the enforcement of the By-law results in a less frequent service, it is for the public to say whether they are satisfied with such a service in consideration of the increased convenience and safety of having conductors on all the cars. It may be that the service will be less frequent in consequence of what has been done; but it strikes me very forcibly that there will be no such result even as that. One's observation teaches that the very frequency of the running of the street cars is that which educates the people into travelling upon them; and the more frequently the cars are run, in reason, the greater the number of people who travel upon them. If there is to be an infrequent service, people will be trained to walk; and in that case the profits which would be made by running the cars will disappear. This is in the hands of the Company. They will do what they think best; and in view of their action the Council and the people will take such steps as they deem best. It is a matter which after all does not interfere with the disposition of the case here. I have nothing to do with the result. I have only to say whether on the present evidence there is any such unreasonable burden placed upon the Company as would induce the Court to hold its hand. I don't see that it is proved. Then it said that the doctrine, not exactly of equitable estoppel,

because that totally failed on the evidence, but having regard to the course of action on both sides, that of the Council and that of the railway, there has been a change of position such as should induce the Court to hesitate. I don't think that is borne out by the facts. There were opposition companies coming into the field and tendering for these lines of road. The street railway, exercising the option given them by the twenty-fourth clause of that agreement, I think it was, chose to keep out those other companies and to place their tracks there. At first they ran one-horse cars, but of their own motion; it was not the result of any agreement or understanding as alleged in these pleadings, between the Board of Works or the Council and the street railway; but simply because at that particular time the neighbourhoods where they ran were sparsely settled, and the expenses would not justify perhaps putting on a more complete service; and the City Council did not choose to enforce any strict rule, as they might have done. But putting on the one-horse cars was an optional thing on the part of the Street Railway Company. But that went on to a very limited extent indeed; because in 1890 we find the matter mooted in the Council of putting a conductor on every car. In 1882 we find a By-law actually passed, prescribing a conductor on every car; and the greater part of the purchases of these one-horse cars has been since that time; the Company acting with its eyes open and knowing perfectly well that members of the Council were agitating, and that the public were agitating, through coroners' juries and otherwise, to increase the charge upon the Company by having conductor as well as driver. Then there was no action on the part of the Council that disables them from acting in this way now. If the argument of Mr. Shepley were well founded, that this change required the sale of all the one-horse cars, then he might argue to some purpose in that way; but I don't see that that follows at all. The Company can keep all their rolling stock, everything just as it is now, and simply put on another man, involving sixty or seventy additional men, which is all that is required; and that is no such great burden upon them as will countervail the advantages they get from running these lines of road. There may have been reason at first not to enforce the By-law strictly; but now that the outlying neighbourhoods are opened up, greater loads carried, and all these cars going through King and other crowded streets, the necessity is pressed upon the Council now not to delay the matter any longer but obviate the chance of accidents by having conductors upon these one-horse cars. No doubt the street railway has been a public benefit to the city. It has helped to build up the outlying parts by the service they have had. But the Company have had the advantage of that in the use of the one-horse cars and the revenue derived from them. Now the City is being built up, it is no argument that things should continue as they were because things were so in the beginning. If the circumstances are such as to give rise to the necessity for exercising the power given by the statute, the Council can pass rules as they see best—can pass by-laws from time to time to protect the persons and property of the public. I might have adverted to the protection which would be given to the public by putting conductors on. We had evidence of a very convincing kind from a great variety of witnesses, beginning with Dr. McMichael and ending with Miss Jarvis; which showed that as to ladies with parcels, ladies with children, people not very sound in limb or of impaired physical powers, conductors would be of very great service. That is manifest; there is no use elaborating. Duties of the kind that are performed by a conductor, if he does his duty, at the rear of the car, will help materially in all such cases and tend to prevent accident. It is only necessary to

look at the legislation in that direction to see that it is justified by the terms of this contract. It seems to me that that covers everything that has been argued in this case. The action seems to be a *bona fide* one, not inspired by the Knights of Labour or anyone else, but a *bona fide* action of the City Council upon a by-law which seems to me to be within the powers of the Council, passed with a view to afford protection as far as possible to the persons and property of the passengers and the public who use the street. I have heard no valid defence urged on the part of this Company. I have nothing therefore to do but to give judgment for the plaintiff. An injunction may issue after ten days. That will give the Company sufficient time to man their cars with conductors. After ten days an injunction will issue to restrain the running of any car without a conductor as well as a driver being on the car. No damages are asked. Costs to the plaintiffs.

Mr. SHEPLEY asks for the injunction to be delayed for a longer period.

His LORDSHIP—A month? What do you say to that, Mr. Robinson?

Mr. ROBINSON—It depends on whether my learned friends intend to press the matter further.

His LORDSHIP—The sittings of the Divisional Court will soon be here; the elections are coming on; there is the Court of Appeal. All these forums are open to them.

Mr. ROBINSON—If it is their intention to resort to these forums, I think the time should not be extended.

His LORDSHIP—Ten days; with leave to move within ten days.

CXXVIII.

CITY ENGINEER'S OFFICE, Toronto, November 20th, 1886.

His Worship the Mayor:

SIR,—In obedience to instructions from the City Engineer, I beg to submit the following memoranda from the Minutes of the Committee (which have just been returned from the Court of Chancery) during the past two years, in reference to the suit now pending between the City and the Street Railway Company, relating to the repairs to those portions of the cedar block pavements occupied by the tracks of the Company.

1. On the 7th April, 1885, it was ordered that it be a recommendation to Council that a suit be instituted against the Company to recover the cost of the repairs made to the block pavement on those portions of the streets occupied by the Company's tracks. (See Report No. 7, Committee on Works.)

2. On the 28th July, 1885, the Committee made a recommendation that proceedings be taken by the Solicitor. (See Report No. 15.)

8. On the 6th December, 1895, attention was drawn to the desirability of going on with the suit. (See Report No. 36.)

Your obedient servant,

E. P. RODEN,

Secretary.

CXXIX.

In Council :—

The following communications were read :

CITY SOLICITOR'S OFFICE, Toronto, 22nd November, 1896.

Re City of Toronto Street Railway Suits.

DEAR SIRS,—It having been stated that the City is damaged by my failure to bring the action against the Street Railway Company for repairs of cedar block roadways to trial, I beg to state that no City interest has been sacrificed or even risked by the delay. When His Worship's message comes before the Executive Committee for their consideration and action, I request that I be heard in explanation of my apparent neglect of duty. In the meantime I have to state that the primary duty in keeping the whole of the street in repair rests with the City Council; and if the advice which I gave in the first instance had been and was now followed no complaint would be heard. The Statute clearly provides that in any case when that portion of any street, which should be kept in repair by the Company, becomes out of repair, "the City Engineer shall give the Company notice at the head office of the Company requiring the said repairs to be made forthwith, and unless such repairs are commenced within five days and carried on with all reasonable despatch to the satisfaction of the City Engineer the said Engineer may cause such repairs to be made at the expense of the City, and the amount so expended shall be recoverable against the said company in any court of competent jurisdiction."

This surely puts the City in position to protect the citizens from accident and enables the Council to keep the streets in proper order and repair.

As to the delay in bringing the action to trial, it will be seen from the above that it in no way affects the rights of the Council being determined. And inasmuch as there is every reason to believe that whatever the result of the trial may be in the first instance, there will be an appeal, and that a considerable time must elapse before the matters in dispute between the Company and the City can be finally decided. The City should not delay in putting the streets in proper order and repair. It may become a question since the Council have the matter of repairs so completely in their power and control, whether in the event of their allowing the roadways to become out of repair and remain out of repair, to what extent the City can claim against the Company in respect of damages sustained by citizens in consequence of such want of repair. I have only to add that this is not the first time that I have had occasion to call attention to this phase of the

question, I would advise that prompt steps be taken to put all the streets traversed by the tracks of the Railway Company in proper order and repair, as the City can be in no way prejudiced by so doing, and may be damaged by neglecting to do so.

Yours truly,

W. G. McWILLIAMS.

To His Worship the Mayor and Aldermen of Toronto.

(Appendix 1,166 to Minutes of Council, Nov. 22nd, 1886.)

CXXX.

In Council :—

The following communications were read :

From Messrs. Robinson & O'Brien, solicitors, informing the Council that the injunction restraining the Street Railway Company from running cars without conductors had been stayed until the end of April next.

(Minute 1,200, Minutes of Council, Meeting held December 6th, 1886.)

CXXXI.

The following are the pleadings and the official notes of the argument and judgment in the case of The City of Toronto v. The Toronto Street Railway Company to recover the cost of repairs made by the City upon those portions of the streets which it is the duty of the Street Railway Company to repair. (See *ante* p. 119.)

IN THE HIGH COURT OF JUSTICE.

QUEEN'S BENCH DIVISION.

Writ issued the 6th day of December, 1886.

BETWEEN

THE CORPORATION OF THE CITY OF TORONTO,

Plaintiffs :

AND

THE TORONTO STREET RAILWAY COMPANY,

Defendants.

STATEMENT OF CLAIM.

The plaintiffs are a Municipal Corporation governed by the Consolidated Municipal Act, 1883, and amending Acts, and certain private Acts heretofore passed by the Parliament of the late Province of Canada, and by the Legislative Assembly of the Province of Ontario.

2. The defendants are a Street Railway Company and are incorporated by, and occupy with their tracks and rails, and operate their railway upon and in certain streets and public highways in the City of Toronto, under and subject to the provisions of a special Act passed by the Parliament of the late Province of Canada, and certain other special Acts passed by the Legislative Assembly of the Province of Ontario; and certain agreements made with, and by-laws passed by the Council of the Corporation of the City of Toronto, the plaintiffs herein, in that behalf pursuant to the provisions of the said Acts as hereinafter more fully set forth.

3. Under the provisions of the agreement bearing date the 26th day of March, 1861, made between the Corporation of the City of Toronto of the first part, and one Alexander Easton of the second part; which agreement is validated, ratified and confirmed by the Act passed by the Parliament of the late Province of Canada, in the twenty-fourth year of the reign of Her Majesty, and chaptered 88, and under and pursuant to the provisions of the by-law passed by the Council of the Corporation the 22nd day of July, 1861, numbered 853, and entitled "A By-law respecting Street Railways," and under and pursuant to the provisions of the Acts passed by the Legislative Assembly of the Province of Ontario, in the 32nd year of the reign of Her Majesty, chaptered 81; the Act passed by the said Legislative Assembly in the 36th year of the reign of Her Majesty, chaptered 101; the Act passed by the said Legislative Assembly in the 39th year of the reign of Her Majesty, chaptered 63; and the Act passed in the 40th year of the reign of Her Majesty, chaptered 85; the defendants are bound to construct, renew, maintain, and keep in good order and repair the roadway between the rails and for one foot and six inches outside each rail; using for that purpose the same material and mode of construction as that which may from time to time be adopted and used for the remaining portion of the street by the Corporation of the City of Toronto, the plaintiffs herein and in the event of the said the Toronto Street Railway Company, the defendants herein, neglecting to keep the street or roadway or crossings, or the space of eighteen inches on the outside of the rails in good condition, or to have the necessary repairs made thereon; it is hereby further provided that the City Engineer, or other proper officer of the Corporation of the City of Toronto, the plaintiffs herein, shall give written notice at the Head office of the Company, the defendants herein, requiring the said repairs to be made forthwith, and unless such repairs are commenced within five days and carried on with all reasonable despatch to the satisfaction of the City Engineer, the said Engineer may cause such repairs to be made at the expense of the City, the plaintiffs herein, and the amount so expended shall be recoverable against the said Company (the defendants herein) in any court of competent jurisdiction; under the agreement dated the 26th day of March, 1861, it is also provided and agreed that the proprietor or proprietors of the said Railway shall be liable for all damages arising out of the said construction or operation of the said Railway.

4. During the years 1882, 1883, 1884, 1885, and 1886, the defendants permitted that portion of certain streets in the City of Toronto, namely:—King street, Queen street, Yonge street, College street, McCaul street, and the various other streets occupied by them with their tracks and rails, which they were bound to maintain and repair as aforesaid, to become and remain out of repair, although

duly notified to repair the same pursuant to the provisions of the said statutes and agreement, and they neglected and refused to maintain and repair that part of the roadways and crossings of the said streets between their rails, and for eighteen inches outside each outside rail, contrary to their duty and obligation in that behalf.

5. Upon the failure, neglect and refusal of the defendants to repair that part of the roadways and crossings on King street, Queen street, Yonge street, College street, McCaul street, and the various other streets occupied by them with their tracks and rails, between their rails and for eighteen inches outside pursuant to their said agreement and the said statutes in that behalf, the City Engineer of the City of Toronto (the plaintiffs herein) from time to time during the said years 1832, 1833, 1834, 1835, and 1836, after due notice to the said defendants to repair their said portion of the said roadways and crossings pursuant to the said agreement and statutes, and after the neglect and refusal of the defendants to make such repairs pursuant to such notices proceeded to repair, and did repair that part of the said roadways and crossings which the defendants were bound to repair and maintain, and in making such repairs expended and paid out large sums of money, the money of the plaintiffs for work, labour and material; in all about the sum of \$6,000.

6. By reason of the defendants failing to keep their portion of the said roadways and crossings in good order and repair as required as aforesaid, and by reason of the defendants portion of such railways and crossings becoming and remaining out of repair through the negligence and default of the defendants, and in consequence of the negligent construction and operation of the said railways by the defendants in the streets and public highways occupied by them during the years aforesaid, damage through and resulting from accidents was caused to and suffered by, and is still caused and suffered by divers citizens and others lawfully using the said streets and highways, and the plaintiffs have been compelled to and paid large sums of money in settlement of actions and claims for damages resulting from the neglect and default of the defendants as aforesaid, and numerous other claims for damage so resulting as aforesaid through the negligence and default of the defendants have been preferred and actions have been brought against the plaintiff, and are now pending and unsettled, and the defendants are liable to make good to the plaintiffs the amounts so paid by them in settlement of such claims of damage, and are bound to indemnify them against such claims and actions for damage now pending and still unsettled.

7. The plaintiffs have demanded payment by the defendants of the amounts so expended by the plaintiffs in the settlement of claims for damages arising as aforesaid, maintaining and repairing that portion of the said roadways and crossings which the defendants are bound to maintain and repair as aforesaid, and the plaintiffs have also requested and required the defendants to indemnify and save harmless the plaintiff from the said loss and damage and claims for damages arising through and resulting through accidents caused by the negligence of the defendants, and the want of repair of their portion of the said roadways and crossings and the operation of the said railway, but the defendants have neglected and refused and do still neglect and refuse to indemnify the plaintiffs against such claims and demands for damages, and to pay to the plaintiffs the moneys so expended by them in settlement of such claims for damages, and in maintaining

and repairing their portion of the said roadways and crossings which the defendants were bound to repair and maintain as aforesaid, but the defendants have neglected and refused, and still neglect and refuse to pay the same or any part thereof.

8. The plaintiffs submit that they are entitled to recover from and be paid by the defendants all sums of money so expended by them as aforesaid, in maintaining and repairing that portion of the roadways and crossings on King street, Queen street, Yonge street, College street, McCaul street and all other streets occupied by the rails and tracks of the said Toronto Street Railway Company (the defendants herein), which the defendants are bound to maintain and repair under the said agreement, statutes and by-law, and in the settlement of claims for damages, and for damages arising from accidents caused by operation of the said railways, and the negligence of the said defendants, and that they should be declared to be so entitled by this honorable Court.

9. The plaintiffs claim the benefit of the Act passed by the Parliament of the late Province of Canada in the 24th year of the reign of Her Majesty, chaptered 83; the Act passed by the Legislative Assembly of the Province of Ontario in the 32nd year of the reign of Her Majesty, chaptered 81; the Act passed by the Legislative Assembly in the 36th year of the reign of Her Majesty, chaptered 101; the Act passed by the said Legislative Assembly in the 39th year of the reign of Her Majesty, chaptered 68; the Act passed in the 40th year of the reign of Her Majesty, chaptered 85, and of the said agreement dated the 26th day of March, 1861, and the said by-law numbered 353. And also of an agreement bearing date the 29th day of July, 1861, made between the plaintiffs (parties thereto of the first part) and the defendants (parties thereto of the second part). Which statutes and agreements and by-law they crave leave to refer when the same shall be produced for greater certainty.

The plaintiffs' claim:—

1. The sum of \$6,000 aforesaid, so paid out and expended as aforesaid.
2. Interest upon the several sums so paid out and expended as aforesaid by the plaintiff from the date of the making of each such payments by them.
3. A declaration that the defendants are bound to maintain and to keep in good order and repair all of the roadways and crossings between their rails and for eighteen inches on the outside of each rail upon and in all streets occupied by their railway, as provided in the said statutes, agreements and by-laws, and in default of their so doing after due notice in that behalf, that they, the defendants, are bound to pay to the plaintiffs all moneys expended by the plaintiffs in maintaining and repairing all such portions of said roadways and crossings, and to indemnify the plaintiffs from and against all claims for damages resulting from accidents caused by the neglect of the defendants to maintain and repair their portion of all roadways and crossings.
4. Such further and other relief as the nature of the case may require.

The plaintiffs propose that this action should be tried at Toronto.

Delivered this 7th day of January, A.D. 1887, by W. G. McWilliams, of the City of Toronto, in the County of York, solicitors for the plaintiffs, of the City Hall, Front street east, Toronto.

STATEMENT OF DEFENCE AND COUNTER-CLAIM.

1. The rights and liabilities of the parties hereto in respect of the matters in the statement of claim mentioned other than those mentioned in the 6th paragraph thereof, depend upon an Act of the Legislature of the Province of Ontario, passed in the 39th year of Her Majesty's reign, chaptered 63, as amended by an Act passed in the 40th year of Her Majesty's reign, chaptered 85.

2. The provisions of the said Act so amended in so far as the same relate to the matters in question herein are :—

"The said Toronto Street Railway Company shall be bound to construct, renew, maintain and keep in good order and repair the roadway between the rails and for one foot and six inches outside each rail, using for that purpose the same material and mode of construction as that which may from time to time be adopted and used for the remaining portion of the streets by the Corporation of the Municipality in which the road or street is situate; provided that where the Corporation of the City of Toronto adopts and used on any streets or portion of any street traversed by the said railway a permanent pavement of wood, stone, asphalt, or other material of the like permanent character, the said Street Railway Company shall not, in such case, be bound to construct the same or to pay more than the cost price of such pavement over the space between their rails and for one foot six inches outside of each rail, and as against the said company such price shall not exceed in any case the sum of two dollars and fifty cents per square yard."

"In case the Corporation of the said City shall determine to construct or renew the paving or macadam on any street traversed by the said railway, the said company shall be bound within one month after the receipt of notice in writing requiring them to do so (in which notice shall be specified the nature of the material or kind of pavement intended to be used, the street on which it is to be used and the time when the work is to be commenced), to construct or renew subject to the provisions of this Act, the paving or macadam on their roadway, and for one foot and six inches outside each rail, using the same material and mode of construction as that used for the remaining portions of the street by the Corporation of the said City, and to carry on the work of construction or renewal with all reasonable despatch to the satisfaction of the City Engineer of the said City of Toronto, and in the event of the said company failing to do so the said Engineer may cause such work to be done at the expense of the City, and of the amount so expended, an amount not exceeding the sum of two dollars and fifty cents per square yard, shall be recoverable against the said company in any court of competent jurisdiction or by assessment as hereinafter provided, and the work of construction or renewal shall be proceeded with simultaneously over the roadway of the said company and the remainder of the street whether the said company shall conform to the notice aforesaid or the said Corporation shall perform the work under the power conferred on it in this sub-section.

"If the said Corporation give the notice mentioned in the next preceding sub-section, and do not themselves proceed according to the terms thereof within the time thereby limited they shall be liable to pay to the Railway Company such damages as may have been thereby occasioned to the said Railway Company.

"In every case of construction or renewal of any kind of permanent pavement

upon any of the streets occupied by said Street Railway Company, the said company shall have the option of constructing their portion of any such pavement, or at their request said Corporation of the City of Toronto shall construct the same, and in every such case the said corporation shall assess an annual rate covering interest and sinking fund extending over the like period as that upon which the assessment upon the adjacent ratepayers is adjusted upon the said company for the cost thereof, not exceeding the sum of two dollars and fifty cents per square yard, with full power to the said corporation to raise such sum by an issue of debentures, and to collect the same in the manner provided under the Municipal Act for the construction of local improvements."

3. The defendants submit that under the provisions of the Legislation herein before set out, the defendants were not entitled to have, and, as a matter of fact, they did not have any voice in the determination of the question, what particular kinds of permanent pavement should be constructed upon the streets of the City of Toronto in the statement of claim mentioned.

4. The defendants further say that all the streets in respect of the repairs upon which this action is brought, are streets upon which the plaintiffs had assumed in pursuance of the said legislation to construct pavements which were intended to be permanent pavements within the meaning of the legislation hereinbefore set out, and the plaintiffs, with regard thereto, dealt throughout with the defendants upon the assumption that the same were such permanent pavements giving the notices mentioned in the said legislation, and constructing, at the defendants' request the defendants' portion of such pavement, and assessing upon defendants an annual rate in respect thereof, and issuing debentures therefore as provided by the said legislation.

5. The defendants have fully paid and satisfied all sums due by them in respect of the price of such pavements.

6. The defendants, under the circumstances and for the reasons hereinbefore set out, submit that no duty whatever in respect of the maintenance and repair of the said pavements is cast upon them, and claim the same benefit from this objection as if they had demurred to the plaintiffs' statement of claim.

7. The alleged want of repair complained of by the plaintiffs in this action is due to the fact that the kind of pavement adopted and used by the plaintiffs upon the streets in the statement of claim mentioned was totally inapplicable to and inadequate for the purposes of any street upon which the defendants were operating their lines of street railway tracks, and, as a matter of fact, the defendants have from time to time protested, and do still protest against pavements of the kind mentioned being laid and used upon the streets traversed by the lines of the defendants.

8. The said alleged want of repair is also due to the fact that the plaintiffs were guilty of gross negligence in and about the construction and laying of the said pavements and the defects in respect of which the said alleged repairs became necessary were structural defects, and were not in any way due to the use and wear of the said pavements by ordinary means and in ordinary manner, and the defendants were not and are not in any way responsible for the said alleged want of repair, or for the said alleged defects.

9. With regard to the 6th paragraph of the plaintiffs' statement of claim the defendants submit that they are not liable to indemnify the plaintiffs as in said paragraph claimed, because no such liability is cast upon them either by the agreement referred to in the statement of claim or by any of the legislation referred to, and the defendants claim the same benefit from this objection as if they had demurred to the claim set out in the 6th paragraph.

10. The defendants further say, with regard to the matter set out in the 6th paragraph, that in and by the Act 40 Vic., cap. 85, hereinbefore referred to, it was provided as "subject to the provisions herein before contained, should the said Railway Company neglect to keep the track or roadways or crossings for the space of 18 inches on the outside of the rails in good condition, or to have the necessary repairs made thereon, the City Engineer or other proper officer shall give written notice at the head office of the company requiring the said repairs to be made forthwith, and unless such repairs are commenced within five days and carried on with all reasonable despatch to the satisfaction of the said City Engineer, the said Engineer may cause such repairs to be made at the expense of the City, and the amount so expended shall be recoverable against the said company in any court of competent jurisdiction." And the defendants submit that it was the duty of the plaintiffs even if there had been default on the part of the defendants (which the defendants deny) to have the necessary repairs made, and the defendants submit that the plaintiffs cannot recover from the defendants any damages which they may have been compelled to pay, or may be liable to pay to the citizens and others lawfully using the said streets by reason of the plaintiffs' own negligence in having such repairs made.

11. The defendants do not admit that the plaintiffs have expended the sums in the statement of claim mentioned in respect of the alleged repairs upon the said streets, or in respect of the said claims of citizens and others against which the plaintiffs claim to be indemnified, but put the plaintiffs to strict proof thereof.

12. The defendants submit that, with regard to the pavements in question, the plaintiffs and not the defendants are under the circumstances aforesaid, charged with the duty of repair and maintenance.

13. The defendants have been put to loss, trouble and inconvenience, and have suffered great damage by reason of the neglect of the plaintiffs to repair and maintain said pavements, and the defendants, by way of counter-claim, claim from the plaintiffs ten thousand dollars damages in respect thereof.

Delivered this 14th day of January, A.D. 1887, by Messrs. McLaren, Macdonald, Merritt & Shepley, of 28 and 30 Toronto street, Toronto, solicitors for the said defendants.

JOINDER.

The plaintiffs join issue on the defendants' statement of defence herein.

Delivered this 28th day of January, 1887, by William G. McWilliams, of the City of Toronto, of the City Hall, Front street east, Toronto.

ARGUMENT.

BEFORE ROSE, J., AT TORONTO, FEB. 5TH, 1887.

C. ROBINSON, Q.C., and Mr. McWILLIAMS for plaintiffs; D. MCCARTHY, Q.C., and Mr. SHEPLEY for defendants.

MR. ROBINSON—In order to explain how this matter comes before your Lordship, I will read Rule 249. (*Reads*) This is a case in which certain questions of law are raised by the defence, the decision of which, if in their favor, would make it unnecessary to go into the question of fact, which would be a long and tedious enquiry; and, by your Lordship's permission, it is brought before you in that way, with a view to raising the questions of law; and I suppose such order can be made under that Act as will show that it is properly brought up. I will shortly read the pleadings. The Statement of Claim sets out. (*Reads pleadings.*) We have demanded this money expended, which they have refused to pay us; and we submit we are entitled to recover it. We claim \$6,000 and interest. They say their rights are settled by 39 Vic. cap. 63, as amended by 40 Vic. cap. 89. I pointed out to my learned friend that it was hardly correct to say that we had assumed, in pursuance of the legislation, to construct those pavements. Your Lordship will see what the question of fact is, if it forms any defence. They say this was not a proper kind of road for us to use, improper material, and that we improperly constructed that pavement. The enquiry into that would of course be lengthy. Then they say that this being permanent they are not liable to repair it. There are three questions which my learned friends mean to raise. First, they say, even being permanent pavements, that although they are liable under the statute for a certain sum in respect to their construction—or, rather, although they are held to a certain liability restricted to a certain sum in respect of their construction—they are not bound to repair them or to keep them in repair. Next, they are not liable to us for any damages which may have been recovered from us by reason of any accidents which have happened in consequence of the want of repair which we complain of. And lastly, they say that it is a defence for them to say that we used—laid down—a wrong kind of road, and constructed it upon improper principles. The first, however, as you will see, is the important question. Are they right in saying that this being permanent pavement—in other words, being block pavement—they are only liable to pay their proportion, or they are only held to their limited liability in respect of construction, nor are they liable to repair. We say it is reasonably clear that they are liable to repair, looking at the different legislation and documents which bear upon this question. This matter is dealt with by resolutions which were passed by the City Council on the 14th March, 1861. I have a little pamphlet which I will hand in which contains the by-laws and resolutions and all the Acts up to 39 and 40 Vic. On the 14th March, 1861, the City Council passed certain resolutions which were afterwards incorporated in a by-law, which is to be found on page 5. As bearing upon this question of liability to repair, I do not think it is important to look at anything except the third and seventeenth resolutions. This by-law recites that "divers inhabitants of the City of Toronto have petitioned the Common Council of the City of Toronto to sanction the construction of street railways in and along and upon the streets of the said City, and the said party of the second part

hath proposed to construct and operate such street railways upon the streets hereinafter mentioned, and the said Common Council did, on the 14th day of the present month of March, accept such proposals by the following resolutions." That was the initiation of the enterprise. Then those resolutions were followed by an agreement dated 26th March, 1861, which is embodied in that by-law, which just recites the resolutions and enacts that the City give to Mr. Easton the right to lay down this track on certain conditions, the stipulations in the above resolutions; and he agrees to construct them in the manner and upon the conditions in those resolutions. Then the by-law did not come until after the Act of Parliament. I have read the agreement from the by-law, but there is an Act of Parliament passed, 44 Vic., cap. 23. All that did was to incorporate the Company and make valid that agreement, and authorized them to pass a by-law; then they passed the by-law that I have mentioned. The result of all that is that the Company were authorized to lay down their track on the street, subject to those resolutions. Then the next thing which you may look at—though I do not see that it is material at all—is that by a number of proceedings that Company was practically sold out, and Mr. Kiely purchased it; and for some reason he thought it better to get a new Company; and 32 Vic., cap. 81, incorporated the new proprietors, and made them subject to the same liabilities and obligations of the old Company. Now, I am told that the difficulties which suggested themselves under that state of things were two; that their resolution says:—"The roadway between and within at least one foot six inches from and outside of each rail shall be paved or macadamized, and kept constantly in good repair by the proprietors." It is said that that gave him the option whether he would pave or macadamize; in other words, gave him the right to choose what sort of roadway he would have between his rails, and for eighteen inches on either side. Then the next thing that occurred was that section 17, which says:—"Should the proprietor neglect to keep the track or the roadway or crossings between and on each side of the rails in good condition, or to have the necessary repairs made thereon, the City Surveyor or other proper officer shall give notice thereof requiring such repairs to be made forthwith, and if not made within a reasonable time, the said Surveyor or other officer as aforesaid shall cause the repairs to be made, and the amount so expended may be recovered against the said proprietors in any court of competent jurisdiction." That left it in a very indefinite shape; the City Surveyor was to tell him to do it forthwith, and he was to do it in a reasonable time. There were all sorts of objections raised there, and these were the two reasons which caused the next legislation; and it is upon the subsequent Act that the rights, in reality, depend. I only refer to that to show that in the very initiation of the enterprise that was the obligation of the Company. They were to repair the roadway between the rails, and for eighteen inches on either side. It was on that condition that they came into existence, and got their right to operate in the City. Then comes 39 Vic., cap. 63. You see that was passed first to meet that difficulty; that it was claimed, as I am told, that it was for the Street Railway Company to decide what sort of road they would have, whether it should be paved or macadamized; so they add to the statute which incorporates this Company, 36 Vic., cap. 101, at the end of section 6 of that statute, which makes this Company subject to all the liabilities and obligations of the old one, they add this:—"They say 'that is hereby amended by adding at the end of section 6 these words:—'Provided first the said Company,'" etc. They did in several places, I believe,

put cobble stone on either side of their rail or for the whole distance between. The second sub-section of that originally stood in these words:—"Where block pavement is now in use, and where," etc. Now, they say that that bound the City to construct, which was plainly never intended. Well, perhaps that does literally and grammatically mean the City should be bound. The first sub-section provided the City should be bound to do so and so; and then they said that whenever the City did something else they should be bound, and I have no doubt that was what was meant by the person who drew it. "Whenever the City of Toronto makes a change they shall be bound to construct;" literally that does mean the City shall construct. It could not have been intended in that way, because the initiation of the thing shows that that obligation was cast upon the Company; and the legislation changed it next year, and clearly made the Company liable; I do not believe it was ever intended to have the other meaning. Then by 40 Vic., cap. 85, they substitute a new sub-section for that sub-section 2, which was alleged to have the effect that I have mentioned: "sub-section 2 of sec. 1 of 39 Vic. is repealed," etc. "The said Toronto Street Railway Company shall be bound to construct, renew, maintain, and keep in good repair the roadway between the rails, and for one foot and six inches outside of each rail, using for that purpose the same material and mode of construction as that which may from time to time be used and adopted for the remaining portion of the municipality in which the road is situated." Then the question arose, if you construct a permanent road, that may be enormously expensive, and it is unfair to subject us to the enormous expense of that; and then another clause was added, "provided that where the Corporation adopts and uses on any street or portion of street traversed by the railway a permanent pavement of wood, stone, asphalt, or other material of a like permanent character, the Company shall not, in such case, be bound to construct the same, or to pay more than the cost price of such pavement over the space between their rails." They say this is a permanent pavement. You have to remember that this is to be read as if it came in chapter 39. This then goes on to add two sub-sections after the ones which were first put in; but I do not refer to them for the moment. Chapter 39 reads in this way: First, that the Railway Company in repairing their roadway between the rails, and for one foot six inches on either side of the rails, shall be bound to use the same materials as that in use by the City Corporation for the remainder of the street; and they shall be bound to construct, renew, and keep in repair the roadway between the rails, etc. Now, then, sub-section 3 says, subject to the provisions hereinbefore contained:—"Should the said Railway Company neglect to keep the track or roadway or crossings, or the space of eighteen inches on the outside of the rails in good condition, or to have the necessary repairs made thereon, the City Engineer or other proper officer shall give written notice requiring the said repairs to be made; and unless such repairs are commenced within five days, and carried on with reasonable despatch, the City Engineer may cause such repairs to be made, and the amount so expended may be recovered in any court," etc. 40 Vic adds to that another sub-section 4. (*Reads.*) Now, that is the whole legislation which bears upon the question. The first difficulty which one sees is: How are you going to get the case out of the perfectly plain words of sub-section 3? First let us read 39 Vic. as if it stood by itself, as if it had not been amended. The first sub-section is "The Company in repairing their road between the rails, and for eighteen inches on either side, shall be bound to use the same materials as the City. Where the block pavement is in use they shall be bound in the first place

to construct, and when it is worn out to renew the pavement on that part of the street which they are bound to repair subject to the provisions aforesaid;" and should they neglect to keep it in repair, the City Engineer could do it. There could be no sort of question as to their liability to repair. How is the liability to repair taken away by the substitution of sub-section 2, enacted by the 40 Vic. instead of the other? 40 Vic. says, in order to settle their liability, "The Company shall be bound to construct, renew, maintain, and keep in good order and repair the roadway between the rails, and for eighteen inches outside, using the same materials as the City, provided that where the City adopts and uses a permanent pavement the Street Railway shall not be bound to construct it. Sub-section 4 points out that they may either construct it themselves or the City may do it at their request.

ROSE, J.—What is the force of the words "Or to pay more than the cost price of such pavement"?

MR. ROBINSON.—It means that if the cost is over \$2.50 they are not to be obliged to pay more than that; in other words, if the City puts down a road which costs more than \$2.50, all they can get out of them is the cost price. It has cost from \$1 to \$1.25, so that they would have to pay the cost price in this particular case. Nothing can be plainer than the obligation by the first part of sub-section 2: "The said Toronto Street Railway shall be bound to construct, renew, maintain, and keep in good repair, the roadway between the rails and for one foot and six inches outside of each rail, using for that purpose the same material and mode of construction as that which may from time to time be used and adopted for the remaining portion of the municipality in which the road is situated;" provided that where the Corporation construct a permanent pavement you are not to be obliged to pay more than \$2.50 per square yard; and then they follow that up by saying that subject to the provisions hereinbefore contained," etc. I do not see on what the argument rests, that because this a permanent pavement they are only bound to construct and not liable to repair. Subject to those provisions, they are bound to repair; and if they do not repair, the City may do it and make them pay the costs. Where do you get the construction they propose to put on it, "if the pavement is a permanent pavement we are only bound to construct, and not to repair?" I am told that what they say is, that as a matter of fact after that the City generally are bound to keep this portion in repair; and there is no reason why they should keep that particular part in repair when the citizens along the line are not bound to keep it in repair. But the answer to that seems to me to be that the City generally are assessed for keeping all those permanent pavements in repair.

MR. SHEPLEY.—We pay a general assessment.

MR. ROBINSON.—They pay a general assessment on their dividends, whatever it may be. They are assessed as a Corporation.

MR. SHEPLEY.—We are assessed on the property.

MR. ROBINSON.—Yes, but you are not assessable on your railway and rails, your track. The Company are assessed on their dividends, but they are not assessed as the citizens are, for the repair of this particular part of the road. The citizens are assessed in one sense for the repair of all these local roads; that is to say, if this pavement is made opposite your door, on the local system you pay

exclusively the cost of construction ; and after that you pay the cost of keeping it in repair. The Corporation of the Street Railway do not join you in paying that. I do not say that that makes much difference one way or the other. That could only be an equitable consideration, forming ground for application to the Legislature. If there is any injustice in it, on presenting that before the Legislature, I suppose they would get fair consideration ; but if the City binds them to repair, the fact that they are assessable, or that they were not assessable, would not alter their obligation in one way or another. In our view, the words of this section are too plain to be got round. From the very beginning this Company was authorized to lay down their tracks and take possession of the street on that condition ; first it was, " You shall construct and keep in repair the roadway between your track and eighteen inches outside of it ; and you must do it ;" and then we add, " You must do that of the same materials as the City use ;" and the next thing we said was, in defence to their plea—which has no effect here, because the price did not come up to what they were afraid of—" Then if we lay down a pavement so expensive as to cost more than \$2.50 per square yard, your proportion of the cost of construction shall not exceed \$2.50." Now, in all that what is there to affect the liability to repair ? What is there that should affect it, or take it away ? They say " because this is a permanent pavement we are not bound to keep it in repair." They say, " after we have paid our cost of construction you are bound to keep it in repair. Of course there is this possible disadvantage in presenting it this way ; we have not the reason of demurrer. We cannot understand how you can get out of the plain obligation of the statute.

The next question they raise is, they say they are not liable to us if by reason of their want of repair accidents are caused and the City is sued for damages, the result of such accidents, and recovery is had against the City. They say they are not liable to recoup the City, and we say they are. Your Lordship will see that this is a very important question in point of amount, for this reason : that a great many of the worst of these accidents happened in this way : it is at the outside of the rail that there is very often a deep, narrow indentation in the road, and several horses have been severely injured by putting their hoofs down there, and tearing off a piece of their hoof. You can easily see that in two ways that is just a place that is very liable to cause the worst sort of accident ; it is very narrow ; and if the wheel gets into it, and you turn short, and you break the axle, there is a sort of space where the horse's foot binds under it, and he is liable to injury. That would be clearly a want of repair within the limits assigned by the statute to keep it in repair. Assuming such an action and recovery against the City for such accidents, are they liable ? The authorities are clear upon the liability both in our own courts and in the United States courts. There is a case in 36 C. P. in our own courts, and I know there are other cases. I have seen the same dictum in passing. There are many cases, as your Lordship is aware, in which accidents of this kind are caused by the default of some private individual ; as, for instance, leaving a log in the highway. If injury happens, the injured person has the right to sue the party who did the wrongful act, or the City ; but if the wrongful act is not the fault of the City, then it is said that the person who did the wrongful act is liable over to the City for the damages recovered.

ROSE, J.—I gave judgment in a case against the City of Guelph, giving relief over against the wrong-doer ; and it came up before this division for review ; and

I think the order *nisi* was not granted; at any rate, judgment was confirmed. And I think there was a case in our own division lately. In the case at Guelph, a person left a trap door open on the street, and a man passing fell in. The City said they were not liable; and I said they were liable; and they asked relief over against the person to whom they had given the right to leave the trap door open; and I thought, under the authorities, I should give it. This case is not reported.

MR. ROBINSON—If that is so, I need do no more than refer your lordship to the case.

ROSE, J.—We gave judgment in our own court in a similar case.

MR. ROBINSON—In *Gilchrist v. Carden*, Justice Gwynne lays down that judgment. In that case the party felled a tree, and in falling the tree struck a beech tree, and did not fall to the ground. They left it there; and during a storm it fell to the ground and hurt some one passing; and it was held they were liable. We have a case exactly in point in the United States; *City of Brooklyn v. Brooklyn Street Railway Company*; sec. 155 of Dearing's hand-book. It is also cited in Thompson on Negligence, vol. 2, 789. (Reads head-note.)

ROSE, J.—There was an action tried before me at Woodstock where the suit was brought against a private individual for blocking up a drain; and against the adjoining municipality. I gave judgment for the plaintiff against both, and ordered the party who had done this wrong to pay judgment and the costs. The whole thing was moved against. Judgment given on the 26th of June last.

MR. ROBINSON—This case of *City of Brooklyn v. Brooklyn Railway Company* is almost identical. This action is brought upon a bond made and delivered to the plaintiff. It is reported in 47 New York 475. That is affirmed in *The People on the relation of Marking v. Brooklyn*, 65 New York 349, decided in 1875. However, it was argued that in consequence of that contract on the part of the street railway the city were exempt, and in giving judgment the judge says, "I certainly see no reason any," etc. Then it is to be observed, *tr.*, as important, that I do not see that in this case they have gone as far as we have here, because you will remember that we have the express contract that they will pay any damages. Resolution 16 says:—"The proprietor or proprietors shall be liable for any damages arising out of the construction or operation of the railways." We not only have the general law that their contract to repair would make them liable, but we have the express contract; and, I may add, that I think it would be quite arguable without the contract to repair, that if they assumed part of our streets they would be responsible; if they had taken off our hands a certain portion of the highway with the right of the prior user, and almost the exclusive user, whether they would not be bound to be responsible to third persons if they had the obligation to repair; but there is no necessity to discuss that, because we have the express contract. That is the second point.

Then my learned friend may contend that our remedy is not an action against them for any neglect, but that our remedy is under the clause giving them notice. It provided that we may give notice, and that they must begin to repair within five days and carry on the work at reasonable speed to the satisfaction of the City

Engineer. I apprehend that that would relieve them from the obligation incurred under resolution 17; and the whole provision is such that we could not exempt ourselves from liability. They have the five days to repair, and the accident might happen during that time. I do not think it will be contended that our only remedy is to give them notice.

The only remaining question is one which I do not know that your Lordship will find it necessary to decide. It is useful in this way, that if my learned friends are wrong it would save the necessity of a long enquiry as to facts. It would not lie in their mouths to say that we have not adopted the kind of street best adapted to the needs of the City; and if we had laid down stones where we had laid down block pavement it would not have got out of repair, and therefore we are responsible. We have the obligation imposed upon us by the general law, and the right of keeping up fairly good streets for the accommodation of the City, and using the best adapted to the City; and we might go into a discussion which might last weeks as to whether we might have had a block pavement or stone pavement, or asphalt, or some other mode; it would be endless. It is a different question whether, if they could show that granting to us the right to adopt such sort of pavement as we may think proper we have constructed in a plainly negligent and improper manner, and the repair arises upon that; that is a different question. It seems to me they cannot possibly sustain the right in point of fact to choose for us the sort of road which we shall adopt on the streets over which they run their tracks. I need not refer your Lordship to the general sections of the Municipal Act (sections 560 and 612.) The question of doing both those roads by local assessment is referred to in those cases, *Marking v. Brooklyn*; and *Brooklyn v. Brooklyn Street Railway*.

Those are the questions of law which I understand arise, and which your Lordship will see it is very desirable to have settled before we enter into any trial on the question of facts.

(Adjourned for lunch.)

After Adjournment.

MR. MCCARTHY—My learned friend has made his statement of facts as we understand them, and I need not repeat the questions which your Lordship has to determine, but merely give the reasons why we think your Lordship should decide in favor of the defendants.

Now, going back to the original contract, and to the Statute which was founded upon that contract, your Lordship will see it was contemplated at that time—and of course we know it to be the fact—the roads were all built in one way or another; there were no such artificial roads as we have at the present day; and therefore the agreement was that the roadway between and within at least one foot six inches from and outside of each rail should be paved or macadamized, and kept constantly in good repair by the said Easton. That was a very proper and reasonable provision. The horses of the Street Railway Company would be continually travelling up and down this track; and if it were not some special pavement, specially good road-bed, they would make a hole there which would render that portion of the road unfit for travel; and that was the obligation that we undertook, not to make the roads as they are made, but the portion of the road

which kept, not to the exclusion of the public altogether, but to a larger extent than the ordinary public, that that portion of the road should be maintained in a certain way for a purpose which is obvious to all.

Then the 17th condition does not, I think, at all affect the matter. It only says that "Should the proprietor neglect to do so, the City may do it." That does not at all affect this question. Difficulties arose, as my learned friend suggested, owing to the new method of paving the streets; and then the Act (which has been referred to,) 39 Vic., cap. 63, was passed. Now, bearing in mind the obligation we had at that time, which was merely to repair, so to speak, or rather to put a peculiar kind, a particular class, of road-bed between our tracks, and on either side of them, to the extent of 18 inches. Bearing that in mind, and bearing also in mind the altered condition of things, we can see what was intended by the Act of 1876. The Company in repairing the roadway between their rails, and for one foot six inches on the outside of each rail, shall be bound to use for such repairs the same materials and mode of construction as that from time to time in use by the said Corporation. That is—instead of the paving in this way or by macadam—that we were to do it with the same materials, and by the same mode of construction as that from time to time in use by the Corporation for the remainder of the street, unless compliance with this condition is, in the opinion of the City Engineer impracticable, by reason of the remainder of the street not being so constructed, or in such a state, as would enable the Company, etc., etc., still not altering at all, but merely changing the obligation which we originally undertook, or rather which Easton, whom we succeeded, originally undertook to do. Then it provided for block pavement; and it says, "Wherever block pavement is now in use, and whenever the Corporation of the City of Toronto makes a change in the kind of pavement for the time being in use on any of the streets traversed by the railway, they shall be bound in the first place to construct, and, when the same shall be worn out, to renew the pavement on that part of the street which the said company is bound to repair as aforesaid." Now, that is perfectly plain, no matter what is intended. My learned friend who is with me, Mr. Shepley, says that the intention was to provide for this expensive method of paving which was then coming into vogue; and the Company insisted, the City acquiesced, and the Legislature decreed that in the case of block pavement we should be absolved from all responsibility whatever, if the City desired.

ROSE, J.—Is there any distinction between renewing and repairing?

MR. MCCARTHY—Yes; we point out that difference all through. It is quite plain that there is a distinction between renewing and repairing; there is the constructing, renewing and repairing.

ROSE, J.—Because you still remain liable to repair under section 2.

MR. MCCARTHY—"Where block pavement is now in use, and whenever the Corporation of the City of Toronto makes a change in the kind of pavement for the time being"—that seems to be apparent from the legislation, that it was supposed that block pavement would not require repairing. It had a certain life. It would last for that time, and would be renewed, but would not require to be repaired. I think that is the explanation of that section.

Mr. ROBINSON—You mean that under that the company were liable for nothing.

Mr. McCARTHY—We were liable for nothing. When we got this franchise we got it on the condition that we should keep up the portion of our road-bed in a good state; and it was provided that no matter what the road was composed of, whether it had ever been macadamized or not, no matter what it was composed of, we should be bound to pave or macadamize that portion that we used, and for 18 inches on either side of our track, which is practically the road-bed.

ROSE, J.—What inducement was there for the City to relieve you then of your liability entirely?

Mr. McCARTHY—Because it was too expensive for us to undergo; that was our complaint. We said when we got this franchise, block pavement or asphalt, for these expensive modes of pavement were never dreamt of; we were liable still to keep up our road-bed by paving and macadamizing, and we think it would be far better for all that should be done, no matter what is said of it; but if you, for uniformity, and the appearance, desire to insist on an expensive class of pavement, such as the block, then we insist that we should be relieved from the obligation of putting that there, which was perfectly reasonable, because it was taking up what we had already put there. We had our pavement down; we had our macadam or our pavement, that had to be torn up, and block pavement substituted for it, and we said, "Why should we be at the expense of doing that because you desire it?"

ROSE, J.—Suppose the legislation stood as it was when this Act was passed, and the block had worn out or become displaced in any way, being rotten or otherwise, on whom was the liability to repair that block?

Mr. McCARTHY—We submit that it was on the City. We think that was not contemplated or covered by the legislation very clearly; we submit that the obligation was upon them.

ROSE, J.—What is the force of the last words of sub-section 2.

Mr. McCARTHY—"Where block pavement is now in use, and whenever the Corporation of the City of Toronto makes a change in the kind of pavement for the time being in use on any of the streets traversed by the railway, they shall be bound in the first place to construct, and when the same shall be worn out, to renew the pavement on that part of the street which the said Company is bound to repair." That is merely limiting the portion of the street we were bound to repair.

ROSE, J.—It may be that the City should block pave and when that was worn out so as to require renewal they should renew, but in the meantime the Railway Company should repair.

Mr. McCARTHY—That may be it, but I rather read that as simply defining and describing the location of the streets; they need not put that down. It meant that without it. Of course they had to repair their own portion of the street.

ROSE, J.—If we read back to the first two lines of subsection 1, it would be a roadway between the rails and the 18 inches.

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Mr. McCARTHY—That is undoubtedly what was meant; "if block pavement is used, whenever the Corporation of Toronto makes a change;" that is what it was intended to mean. These words are necessary to carry out the meaning. When we read the third sub-section we find "Subject to the conditions hereinbefore contained, should the Railway Company neglect to keep the tracks in good condition, or to have the necessary repairs made thereon, the City Engineer or other proper officer shall give written notice"—that is sub-section 2 of section 2; subject to their being block pavement in use, or the road-bed being changed into block pavement; in that case there was no obligation. "Should the said Railway Company neglect to keep the said railroad crossing or track in good condition, or to have the necessary repairs made thereon, the City Engineer, or other proper officer shall give written notice requiring the said repairs to be made." That makes plain what your Lordship has just asked me. Reading the three together, it is reasonably clear we were absolved from all responsibility by sub-section 2, and the amendment of sub-section 5. For cases not provided for by section 2 we shall repair by getting this proper notice. We say our liability and responsibility had been increased; and it will take very clear words to alter a contract, and to impose a liability upon parties which they have not agreed to themselves. Then we say on the contrary that it was provided, regard being had to the changed circumstances and conditions of things, that in certain cases we should do certain work, and in a certain way, and in certain cases we should have no work, and no responsibilities whatever.

Now, we come to the next enactment. Sub section 2, which I have read, clearly relieved us from liability with regard to block pavement.

Rose, J.—Relieved you from constructing or renewing.

Mr. McCARTHY—Yes; and also from repairing, regard being had to sub-section 3, which otherwise would be meaningless. "Subject to conditions hereinbefore contained;" what does that mean, if in all cases we were obliged to repair?

Rose, J.—Unless the distinction you have drawn between repairing and renewing makes that sensible, you are not to repair to the extent of renewing.

Mr. McCARTHY—I think I shall be able to point out before I am through, that they use the word renew—and I may as well call attention to it now: take, for instance, the next Act; and we find section 4 "In every case of construction or renewal": section 2, sub-section 4, "In case the Corporation of the said City shall determine to construct or renew" certain things are to be done. Section 1 "The said Toronto Street Railway shall be bound to construct, renew, maintain and keep in good order," which evidently means to repair: the word "renew" means one thing, and the word "repair" another thing. Now, I say that these words "Subject to the provisions hereinbefore contained" are meaningless unless sub-section 2 is an exception to the general liability imposed by sub-section 1, because sub-section 3 is merely dealing with repairing. "Should the Company neglect to keep the track or roadway or crossings for the space of 18 inches on the outside of the rails in good condition, or to have the necessary repairs made thereon"—which is only an equivalent expression—"the City Engineer or other proper officer shall give written notice requiring the said repairs to be made." "Subject to the provisions hereinbefore contained." These words are put there for some object. They are meaningless if the contention on the other side is correct; in any other case we

would be bound to do it. If my learned friend's contention is right, that in all cases where it was block paved, or was not block paved, we were bound to repair, what is the object of putting in those words "Subject to the provisions hereinbefore contained"?

MR. ROBINSON—It means of the same material and same mode of construction.

MR. MCCARTHY—It has already enacted that we are to use the same material. Then it goes on to say "Should the Railway Company make default in doing what we ought to do, then the Engineer may give us notice." That is what that is for. Then the meaning of the clause "Subject to the provisions hereinbefore contained" is that under section 2 we cannot make default, and therefore that is to be excepted out of our general liability. Now, then, we come to the next enactment, and here we have a new section.

ROSE, J.—As a matter of fact, if the pavement be not a permanent pavement, and it can be kept in repair, I suppose it would never want renewing?

MR. MCCARTHY—No.

ROSE, J.—If it be not permanent, and is kept in repair, I suppose it would never want renewal.

MR. MCCARTHY—I suppose probably with some kind of wood, that might be so; I am not prepared to answer that. I do not know how that would be.

ROSE, J.—If you kept a road-bed in constant repair, you would never have to renew it, I suppose.

MR. ROBINSON—Macadam is never renewed.

MR. MCCARTHY—You do not find the "renew" used at all, until we come to the statute which speaks of permanent pavement. If I remember rightly—and I think the distinction they drew probably was just what your Lordship said—an ordinary road, by being kept in repair would not need renewal. The other road did not require to be kept in repair, but did require to be renewed.

ROSE, J.—Our own observation shows it does require to be renewed.

MR. MCCARTHY—Yes; I think it never was contemplated—it never was dreamt—that it would have to be renewed. It is just five years since the block pavement was put on Yonge street, and it cannot be called a permanent pavement.

ROSE, J.—I should think force might be given to the words by saying you would be bound to repair so long as your repairs did not amount to renewal.

MR. MCCARTHY.—That is not very important to determine until we come to look at the next section, because this is wiped away; that has been repealed, and our liability does not accrue under that at all. The only object in tracing the legislation is to see what our obligations were.

ROSE, J.—If it were admitted—which, of course, you do not admit—that under the Act of 1875-76, you were still bound to repair by sub-section 2, it would rob your argument as to the statute of 1877 of much force?

Mr. McCARTHY—It would, no doubt; it affects my argument to that extent. "The said Toronto Street Railway shall be bound to construct, renew, maintain"—it is quite plain what our obligations are—"and keep in good order and repair the roadway between the rails, and for one foot and six inches outside each rail, using for that purpose the same material and mode of construction as that which may, from time to time, be used and adopted for the remaining portion of the municipality in which the road is situated." These are general words, which, if they stood alone, are substantially re-enacting clause 1, and adding something to clause 1 of the statute of 1876.

Ross, J.—It puts it upon the liability to construct.

Mr. McCARTHY—We had the liability to repair before and now we have the liability to construct. We also have the liability to renew, and we have the liability to maintain; but this proviso is made, the first part of the enactment applying to all kinds of roads, no matter what material: "provided that where the Corporation adopts and uses on any street or portion of street traversed by the railway a permanent pavement of wood, stone, asphalt or other material of a like permanent character the company shall not in such case be bound to construct the same, or to pay more than the cost price of such pavement over the space between their rails," and so on, limiting the liability. Now, we say, first there is the general enactment, applying to all roads; and then it says, "provided in case the Corporation chooses one particular kind of material for making a road our liability is dead."

Ross, J.—That is as to construction.

Mr. McCARTHY—We say not. This is the way it has to be read, "Provided where the corporation adopts or uses on any street or portion of road a permanent pavement of wood, the condition is altered."

Ross, J.—Take a block of stone up on end, so as to make it dangerous; what then?

Mr. McCARTHY—We say they are to repair it. They have chosen to have a kind of pavement which they call permanent. It is perfectly plain that, although permanent, it is only permanent in one sense.

Ross, J.—You were originally bound to repair pavements?

Mr. McCARTHY—Yes; but that is a different kind of pavement; we were to pave or macadam.

Ross, J.—You were to pave and keep pavements in repair.

Mr. McCARTHY—Yes; but this has contemplated a different kind of pavement. We were to pave within our own track, no matter what the other part of the road was, pave or macadam. That was the first obligation; and I suppose that pavement was not intended to be of a very costly character, and was left at our option to pave or macadam. If we chose to pave we were bound to keep in repair. We might macadamize if we wished, and then we would be bound to keep in repair. Now, although the word permanent is not used, it is plain, looking at section 4, it was recognized that what was called a permanent pavement would be, after all, a temporary one, because it has to be renewed; "in every

case of construction or renewal of any kind of permanent pavement." Then what is the distinction between the permanent pavement and the ordinary pavement if it is not in the saving of the keeping in repair? So that what we say the section means on its face is that while for most cases, the generality of cases, the obligation is to make or construct, to repair and to renew, that where the City, who have the option—as my learned friend has argued to your Lordship that they had—have the option of choosing a permanent pavement, and they do choose a permanent pavement, that our liability is confined to paying our share of that cost; and the rest is left to the City; and that is strengthened when we look at section 4, because it says here in section 1 we shall not be bound to construct. The whole contract is changed. Our duty before was to construct; now all that is changed.

ROSE, J.—You see that the same clause that relieves you from the liability to construct is the clause that first places upon you that liability.

MR. MCCARTHY—Yes; but I say that the liability was general for us to construct. Now we are not to construct, nor are we to pave beyond a certain sum. Then if you read section 4: "In every case of construction or renewal of any kind of permanent pavement upon any of the streets traversed by the Street Railway Company, the Company shall have the option of constructing their portion of any such pavement, or, at their request, the Corporation of the City shall construct the same; and in every such case the Company shall assess an annual fund," etc.; and it provides that the cost thereof shall not exceed \$2.50 per square yard. Here, now, we find it incorporates practically the provisions of the Municipal Act; and we know that the provisions of the Municipal Act did not oulge those who paid for the construction of this kind of permanent way to keep it in repair. They have to construct it, but the City has to keep it in repair; so that the Legislature appears to have been fixing upon the Railway Company the same liability that at that time it had fixed upon the adjoining proprietors; that is, to make this way if it was of a permanent kind, leaving the City to maintain it. We were to make it; we were to renew it; we are not to maintain it. Now that argument is, to my mind, made unanswerable.

ROSE, J.—They could not assess actual repairs.

MR. MCCARTHY—No.

ROSE, J.—Because it would be impracticable; and therefore the fact that we find no provision for the assessing of the repairs would not help us.

MR. MCCARTHY—It shows us that the scheme of legislation was that the parties liable to make it should make it, but the City should keep it up, because it would be a trifling sum when done by their road officers from time to time, and as to which it would be impossible to keep count of the cost. The City does this work by having its staff of men who perambulate the streets, and where they find a block has risen, or been pressed too low, it is replaced. You cannot fix the cost of it; it is a trifling thing. It may happen once a month, or once in six months; but it is such a trifle that it cannot very well be reckoned. What was intended was to let the City manage that part of the street. It was under their control, to be managed by them, and not to have two sets of individuals, or two corporations responsible, separating their liability in that regard. Now, I say that

argument is made unanswerable. It appears to me if the view which I have ventured to put forward with regard to the amending of the Statute of 1876 is the correct one—because it is quite plain, at all events, that by the original charter, by our contract, which is not likely to be altered by the Legislature, and which the Court cannot presume has been changed by the Legislature—unless the thing is so plain as to remove any room for doubt, or the intent from that is so clear that no other result could be arrived at, I say originally, there was not that liability. We say that when the new legislation of 1876 was passed our rights were observed and preserved, and it was clearly intended that while our obligation in some respect was increased, that the freedom from liability in the other case was compensation for that; and can read within the lines of the statute of 1876 a fair reasonable bargain or consideration for the obligation on the one part, and the freedom from liability on the other; but if the view put forward by the City is correct, without rhyme or reason, the Legislature has imposed upon us at the instance of the City a liability which we never agreed to, never undertook; and far in excess of our original contract.

ROSE, J.—What do you say your original contract was?

MR. MCCARTHY—The one referred to here, to pave, macadamize, and keep in repair, which is a vastly different thing from making a block pavement, which is the case here. We were to pave, macadamize, and keep in repair, the road being already made. It is not constructing another road; it is putting another material upon the road. What is the macadamizing? It is putting down the broken stone within the track.

ROSE, J.—What is paving?

MR. MCCARTHY—Paving, I suppose, would be putting blocks, or there is another method of paving-cobble; that is a method of paving. That is what my learned friends used. Stables are paved in that way, yards are paved that way; just those round stones put in their place; at all events, we were not bound to pave. That was our own option. We might have put blocks there if we thought it would have saved expense in the long run, but we were not bound to do it. We were to macadamize, to put on good material on the road on which our horses were continually treading and using up the road. Then comes the new arrangement which was a reasonable one.

ROSE, J.—On such a road-bed a more frequent repair would be requisite or necessary than upon one of a permanent character.

MR. MCCARTHY—No doubt.

ROSE, J.—By putting down a permanent roadway you would be relieved largely from repairs.

MR. MCCARTHY—That may be, but your Lordship will see what we may be assumed to have agreed to in this Act of 1876, because there is plainly a bargain arrived at there, or the Legislature has recognized the position. It says, "The Street Railway Company, in repairing the road-bed, shall be bound to use—not macadam, which we had the option of using before, or pavement—but we shall be bound to use the same materials that the City are using. That was also in our liability.

ROSE, J.—Stopping right there, they have not relieved you of that?

MR. MCCARTHY—Pardon me, that is increasing our liability plainly, and if that statute stood alone, that would certainly be a very harsh piece of legislation. The whole of this is founded on contract, as the learned Chancellor decided in the other case; the whole of this matter between the Street Railway Company and the City of Toronto rests and is founded upon contract. A contract was made between the City and Easton. That contract afterwards was embodied in the charter. The charter gave the City power to pass a by-law for the purpose of carrying it out. The City recite the contract, and enact it; so the whole of it rests in contract. It is an agreement between A. and B. When the Legislature undertook to say that instead of paving and macadamizing we should put whatever material the City happened to use, it was imposing an additional burden, and altering the contract to our disadvantage; but as compensation for that, the Legislature in the next clause says that where block pavement is now in use, and whenever the Corporation makes a change in the kind of pavement for the time being in use on any of the streets traversed by the railway, they shall be bound in the first place to construct, and when the same shall be worn out to renew the pavement on that part of the street which the said company is bound to repair as aforesaid. Then, following that on, and shortly repeating what I have already said, the subsequent provision shows that the repair clause is limited to the obligation imposed upon us by section 1 as cut down by section 2. The result, if I am right, is this, that we were not to repair, construct, or renew where block pavement was used. We were to repair, we were to renew, if renewal became necessary, we were to keep in repair and maintain with the same material that the City used in other portions of the street. Our part of it is defined in the Act.

Then, following, the next change is that we shall be bound to construct, renew maintain everything but permanent pavement. In the case of permanent pavement we shall not be bound to construct or to pay more than so much; and we say that is the change; therefore—carrying out the scheme which we find in section 76—that is the change which was imposed by this new Act; and that view is strengthened when we find the machinery for the pavement being the same as in the Municipal Act in force at that time. Now the sections of the Municipal Act in force at that date was the Statute 86 Vic., Cap. 48; and sec. 478 says, "Nothing contained in the three next preceding sections shall be construed to apply," etc. We find they have brought in machinery, though not this particular enactment in so many words, but the machinery for levying the rate and the mode of paying it is incorporated in this special Act by section 4. This is the first view which we present to your Lordship, which is wholly dependent upon the construction of these statutes: and the only authority I refer to is that in the alteration of a contract, which is an infringement on private rights, clear words must be found, or the intent from the words must be not open to doubt or cavil. *Western Counties v. Indianapolis Railway Company*, in 7 Appeals, that is laid down and referred to there.

Our next contention is that if we are liable as contended that we cannot be liable in a case where the City does not select permanent pavement. If we have to pay a large sum of money for putting down a so-called permanent pavement, which the City have the sole choice in the selection of, and in which we have no voice. We say that it cannot be assumed that, if that is not permanent pavement, and

wears out in two or three or four years, if it is a kind of pavement wholly unfitted, that we are to be made responsible to renew that and to keep that in repair.

Ross, J.—What is permanent pavement?

Mr. McCarthy—Well, the Legislature seem to say is permanent pavement.

Ross, J.—If you make pavement of good stone or asphalt it is permanent.

Mr. McCarthy—So they seem to make out here. I suppose under that contention we would have to prove to the satisfaction of the referee to whom this matter would be referred, whether it was permanent pavement or not. It is quite plain that it is not every wood pavement which is permanent.

Ross, J.—I suppose it would be admitted, at that rate, that you would not be liable to pay for pavement that is not permanent.

Mr. McCarthy—That is what I think; and we say if they put down a pavement which they call permanent, and which is not permanent, and it goes all to pieces in six months, they cannot call it permanent.

Ross, J.—Your liability would be outside of that section.

Mr. McCarthy—Our liability would be outside of that section.

Ross, J.—And that would be to repair?

Mr. McCarthy—Yes, unless under this section here—of course there is a difficulty in escaping from that section; in the one case we would pave it; in the other case they say "this is permanent, and we will make you pay so much a square yard," and possibly they might make us pay \$2.50. Can they now, having said that is permanent which is not really permanent, can they be heard to say, "you must keep that in repair?"

Ross, J.—That depends on your other argument, of course.

Mr. McCarthy—If we are liable to maintain a permanent pavement—or, we say, admitting that liability for the sake of this argument—we are not liable to repair this particular so-called pavement, because it was of such a character that you ought not to have used it as a permanent pavement.

Ross, J.—Would not the remedy be to obtain back the money in excess of that which you ought to pay for an ordinary pavement, if, for instance, they charge \$1.25 a square yard, where in fact it only cost 50 cents?

Mr. McCarthy—The difficulty is that it may have cost all that they charge. We do not pretend it did not; but we say they have pretended—they have so-called a pavement a permanent one which is not permanent pavement.

Ross, J.—Say it is not a permanent pavement; supposing it is beyond dispute; well, then, that section would not apply; that is all.

Mr. McCarthy—We say that although they do not apply in reality, they are estopped from saying they will not apply. They are in that position that we often find people are in.

ROSE, J.—But you are assuming you are not bound to repair a permanent pavement.

MR. MCCARTHY—No, I have passed from that. I need not argue this branch. I will pass that point; if I am not bound to repair a permanent pavement under the argument I have already advanced, there ends the question.

ROSE, J.—Unless this is not a permanent pavement.

MR. MCCARTHY—No; I am going on the other assumption. They start with the assumption it is permanent, and say we are bound to repair it and now that we are liable. We say, in the first place, we are not bound to repair in case of permanent pavement. That I have passed. Then we come to the next branch. What we say is this, "you have called it a permanent pavement, but in reality it is of such a character that it should not properly have been called a permanent pavement; and as you alone have the choice in the selection of that pavement, and were bound to select that pavement, we are not to be held responsible for, your selection of material, we being able to show this is not such as should be used.

ROSE, J.—That involves the question if you can dictate to them under the statute what they shall lay down as a permanent pavement.

MR. MCCARTHY—No; they have the option of selecting the pavement, but we say, "If you call a permanent pavement that which is unwholly unfit for a road-bed you cannot ask us to keep it in repair; it is your own fault if you have used material of that kind."

And, lastly, we say—and I do not think my learned friend disputes that proposition; at least I did not understand so—that if they have negligently and improperly put down this pavement, by reason of which it has become out of repair, they cannot hold us responsible. They say, "we want to put down block pavement." They make us pay our proportion of it. They put it down so badly that the road-bed or pavement, which would otherwise have stood ten or twelve years, gets out of repair in two or three years. We say "you cannot make us liable." In other words, we say "your duty to us is to put that material down in a good and sufficient way, and if you have not done so you cannot make us pay for that default," and on the contrary we counter-claim and say, "you are liable to us in damages for the improper way in which it has been put down;" and on that there would have to be a reference. That comes up under the 8th paragraph of the Statement of Defence.

Then, as to the other branch of the case, which is not, of course, the important matter in dispute between them—that is as to our liability to accidents. We do not deny under our agreement a certain liability for the character of the accident of which we have particulars here. In all cases I think they are for accidents that happened to horses, owing, as they said, to the road being out of repair. We say we are not liable to the City for that; and we put it on these different grounds: In the first place, if the effect of this legislation is as I have already contended for, and we are not bound to keep in repair, of course that ends it, because if we are not bound to keep in repair, we are not in default. If we are bound to keep in repair under the legislation, then we say the City is not bound to keep that portion in repair, and have nothing to do with it; and there-

fore the City could not be sued, and ought not to allow itself to have damages recovered against it, and cannot make us pay. In other words, the responsibility was a responsibility direct from the Street Railway Company to the injured individual. The City was not at all liable in that view, but merely the Street Railway Company.

ROSE, J.—You mean they are relieved from the general liability?

MR. MCCARTHY—Yes. That portion of the street, the nine feet, is by legislation, because this contract has been ratified by the Legislature, that nine feet is put in under the control of the Street Railway Company. That portion, therefore, is, as it were, taken away from the ordinary liability which would otherwise be imposed and is otherwise imposed by the general law upon the Municipal Corporation. There is no liability, therefore, to the public or to the injured person by the City. They have no business to step in and assume our obligations and ask us to recoup them.

ROSE, J.—Would not the argument be against you in this way; that liability is merely as between you two; but the Legislature did not relieve the City of their general liability to the public. This is merely a contract between yourselves.

MR. MCCARTHY—If that is the proper view of it, your Lordship is quite right; but I take it it is more than that. The contract is made, and the Legislature adopt that contract, the Legislature enact that contract and, ratify it; and therefore there is a contract by the Legislature that the Street Railway shall keep that in repair. It does not say "preserving always the liability of the Street Railway to the City Corporation."

ROSE, J.—Is it any different from the Water Works? Under the old legislation the City was allowed to permit the Water Works Company to cut up the streets. The City was held responsible for the repair of the streets.

MR. MCCARTHY—Yes, because it was merely to dig it up and put it down in that case; but that is not the obligation alone; we are bound to keep in repair that nine feet of the street, not merely to repair the damage we do ourselves, the wear and tear of the railway, but to keep in repair everything that is done.

ROSE, J.—Is there a distinction in principle; supposing that on the first day your liability arises you neglect to perform your duty, and by reason of that neglect an accident happens, the Legislature having said "you may arrange between the Corporation and the Railway Company to repair it that day?" The Legislature say "you may enter into an arrangement with the Water Works Company by which they may dig a hole in the street, and may repair that."

MR. MCCARTHY—Must repair it, I suppose.

ROSE, J.—Well, must repair it. Well, then, they neglect for one day to put that in repair, and an accident happens; is there a distinction?

MR. MCCARTHY—Yes, I think there is; but I think in the case your Lordship puts the City would not be liable.

ROSE, J.—*Ridgeway v. Toronto* was a similar case, where the City Water Works left open a hole in the street, and the City were held to be liable.

Mr. McCARTHY—There must have been some knowledge on the part of the City, I should think there would be no doubt in that case, because the City is bound to see that the street is closed where it is open by leave of the City. But here in this case the Legislature has said that nine feet of the road is to be always, from the 1st of January to the 31st December, to be kept in repair. If there was an obligation towards the public upon the Street Railway Company to keep that nine feet in repair, an indictment for non-repair would lie against them.

Mr. ROBINSON—The American cases are against that view.

Mr. McCARTHY—I am aware of that, but it is not a decision binding here; it is merely a *dictum*. I should have thought that if the obligation, the legal obligation, thus imposed was to be maintained by both parties that the Legislature would have said by some words, or used some words to show that the Corporation was not to be freed from its liability. If I am bound to repair 66 feet of a street, and afterwards the obligation to repair 80 feet of that is imposed upon somebody else, I should think that, without more, I am at once freed from liability as to that 80 feet, and I do not know why that should not be the same in this case as it would only be nine feet.

Then, if that be not so, the other view comes up, that we were both bound to repair; it must be one or the other; that we are bound to repair, and they are bound to repair. If we are both bound to repair, and we do not repair, we are joint tortfeasors, and I know of no case by which one joint tortfeasor can be obliged to pay the damages suffered against the other joint tortfeasor.

ROSS, J.—Take this state of things; the Corporation erect a drain, and the party through whose lands the drain runs wrongfully stops it up; the Municipality know of that stoppage and do not relieve it; an overflow, damaging the adjoining lands, occurs; he brings an action against both.

Mr. McCARTHY—That is the case which your Lordship says has been decided in the Court.

ROSS, J.—Are they not both wrong doers?

Mr. McCARTHY—No; that is distinguishable. The wrong-doer is the individual who stops the drain. The Corporation's liability is of a different character—for non-feasance, not for mis-feasance; quite a different thing. Suppose that I put a block on King street; my wrong is putting the block there and I am liable for any damages which arise. The City are liable for not removing it, and it is non-feasance. I remember one or two cases in my own county turning on that point. People have left saw-logs on the road; accidents happened and an action is brought; and the question is, was that pile of logs left there so long that the Corporation ought to have known it and removed it, or did they know of it, their liability depending upon the fact of their not having taken it away.

ROSS, J.—In this case, are they not both nonfeasance?

Mr. McCARTHY—No; it is a misfeasance, I presume; that is misfeasance, non-repair; it is the joint misfeasance. If we both could be sued, and could be sued jointly on this assumption, the allegation would be that it was our duty to repair and we did not repair; and the action could be brought against the City. In the other case it would be quite different. It would be that the adjoining land-owner,

through whose land the drain ran, who ought to have allowed it to remain open, and closed it, and the Corporation, knowing that was closed, allowed it to remain closed, whereby the accident happened. I know of no case in which an action could be maintained by one of the two wrong doers against his fellow wrong doer.

ROSS, J.—I suppose the general principle will not be disputed.

MR. ROBINSON—That is very much discussed in the American cases.

MR. MCCARTHY—The case my learned friend referred to in 26 C. P. is a different case which I would not dispute. Justice Gwynne says, and only says as a dictum, not necessary for the decision at all, but merely says that where the officer of the Corporation has done the wrong that the Corporation would have the remedy over. Well, that is depending on contract, I take it. If my officer, if my servant was bound to do something which he has not done, and by reason of which I am sued as a wrong doer, I have a right over against him, depending upon the contract between us. That is what Mr. Justice Gwynne decides in *Gilchrist v. Carden*, or rather, that is what he states; and I suppose that is following American authority, and I suppose is very good law, but it is depending upon contract, and that brings me to the consideration of what the contract is here. I thought when I heard my learned friend's argument that the City's claim was founded upon the contract, and upon the contract only. My learned friend seeks to enlarge the liability beyond the terms of the contract. Our contract is to be found in the 16th condition, "The proprietor or proprietors shall be liable for all damages arising out of the construction or operation of the railways." Then on page 8, "And the said party of the second part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said parties of the first part, their successors and assigns in manner following, that is to say: first, that he will construct, maintain and operate the said railways within the times in the manner and upon the conditions in the said resolutions and these presents set forth," etc. What does that mean? Does that mean anything more than that we are to be liable to pay to the public to the person who is injured; it is not that we shall be liable to you, but we shall be liable for all damages. If it covers a case of this kind at all—which I do not think it does, and which I will endeavor to show it does not—it is not anything more than a mere declaration which the Legislature sanctioned that we shall be liable to the parties and if so there was no liability to the City, following the same line of reason I have already stated; but what I contend is that this covenant and this condition does not apply to a case of this kind at all. We shall be liable for all damages arising out of the construction; that is the making of the road, not the negligent making of it; but if in the making of the road, following the line of the railway cases, if the making or operating the road causes damage, for that making or for that operation which you are permitted to do you shall be liable, and shall indemnify us. If, for instance, a landowner, people living on the streets, have, by reason of anything you did in making this road, causes of action, you shall be liable. If, for instance, the effect of it is to interfere with the watercourse, or anything of that kind, to cause a new watercourse to be made; and that line of argument is strengthened very much with reference to the case under the land clause of the Consolidation Act, although the words are not the same; the words are, "Shall be liable to make good all damages sustained in the execution of the work." That is pretty much the same as the construction of the road. Then

comes the operation: but surely it is not contemplated that the negligent operation of the work is provided for here. That is left outside altogether. For that negligent operation we are liable to the public. Actions are brought against the Company, and can be brought against the Company for injuring a person in the working of the road, whether it is a passenger or some one using the road; and if there is an obligation upon us to maintain that road, there is a liability on our part for accidents.

ROAN, J.—I would like to know the effect of chapter 61, Incorporation Act. I want to see whether this liability is a liability to the public or to the City.

MR. MCCARTHY—It is rather difficult to maintain the proposition that this sixteenth clause—although, perhaps, Mr. Shepley has stronger views on that than I have—that the liabilities on this clause are to the public, because it is a contract; and it would be difficult to see how on that alone any person could come in and say "I have sued you because you agreed that the City should not be liable." The way I put it to your Lordship is that we would be liable for our own wrongful act irrespective of any contract; and what that was intended to provide for was the acts which were not wrongful, which were necessary, in point of fact, for us to do in the construction and maintenance and operation of the road—these acts which we had to do, and which caused damages to land-owners, who could rightfully recover, just as with any other Railway Company who are using their privilege; and for these acts we are bound to make good. It is merely a condition on which our charter is granted—a condition which these people could avail themselves of—a condition which would prevent us saying, "We have got legislative power to give us your property without compensation;" and that seems to be the line of the English authorities. There is one case in 6 App. Cases which goes to show that the rights of individuals are not taken away except by express legislation; and it would also show that people under such terms as that would have a right to maintain an action for the wrong done, or the nuisance created, notwithstanding that permission was given in such terms as these to a Corporation or an individual to do the act. On page 8 of this pamphlet, the 4th clause reads:—"That during the construction of the said railways due and proper care should be taken to leave sufficient space and crossings, so that the traffic and travel on the said streets and other streets running at right angles thereto shall not be unnecessarily impeded, and that the water courses of the said streets shall be left free and unobstructed, and lights, barriers or watchmen provided and kept by the said party of the second part when and where required to prevent accidents to the public." These are reasons why we think the action is ill-conceived, and that we are not liable on any of the grounds. We are not liable under that agreement, because it does not cover the case. We are not liable to the City, because in one view we are both wrong doers; we are not liable to the City in the other view if the duty is cast upon us because the City ought not to have assumed our responsibility. We are not liable unless we are bound to repair. I need not repeat what I have said with regard to the other, because I think I have made my meaning clear.

MR. SHEPLEY—I think it would be useful to consider for a moment the history of this legislation, and the state of affairs at the time this legislation was passed, though not strictly admissible, perhaps; but inasmuch as my learned friend Mr. Robinson has dealt with the matter, I think I have a right to refer to it.

Under the original agreement, as has been pointed out, the liability to repair under the third resolution arose by virtue of a contract simply. The resolution reads:—"The roadway between and within at least one foot six inches from and outside of each rail shall be paved or macadamized and kept constantly in good repair by the said Easton, who shall be bound to construct and keep in good repair crossings of a similar character to those adopted by the Corporation within the limits aforesaid, at the intersection of every such railway track and cross streets."

That contract was made with reference to the state of affairs then existing; that was in 1861; long before there was any contemplation of the building of any permanent pavement of any kind. The roads then were either clay roads, or roads with macadam spread upon them; and so far as the parties were then contracting, no contemplation whatever of the building of such pavements as have since been built. Well, then, when the matter was agitated as to permanent pavements, before the Act of 39 Vic. was passed, there were three things which, in the view of the City, who were seeking the legislation, required to be dealt with. In the first place, the Railway Company was under contract with the City, or under terms with the City to extend the Sherbourne street line from Carleton street, where it then terminated, to Bloor street, and the road-bed had never been completed there at all. There was nothing but a sandy road from Carleton street north to Bloor street upon Sherbourne street. The Street Railway Company had taken this stand; they had said, "It is true we are bound to keep in repair, but we are not bound to lay a road-bed upon which the tracks can be laid; that is something which must be found for us before we commence to lay down our tracks." The City were urging the construction of the road, and the Railway were resisting on that ground, saying, "Until we have a road there to lay the tracks on, it is impossible for us to go on and lay the tracks;" and saying, still further, "that even if we are bound to construct the road-bed for the space between the rails, and for eighteen inches outside of each rail, it is impracticable to do it in the present condition of the road, because you cannot, without laying the proper foundation, and without having the rest of the roadway to correspond, you cannot lay a ridge of macadamized road in the centre of the sand and properly construct and operate a railway there." That was the first thing that had to be dealt with at the time this legislation was passed. The next was that they were then contemplating the abolition upon some of the streets of the old macadam bed, and the construction of wooden pavements, block pavements, upon it: and with regard to that we said that was not within our original contract. We contracted with reference to the state of affairs that then existed. If that state of affairs is changed, and if now you contemplate the laying of an expensive and altogether different sort of pavement, our contract does not apply to anything of that kind; and we are still at liberty, although you build your block pavements up to the edge of the strip we have to maintain, we are still at liberty to maintain with the original materials within that strip. That is the second matter that had to be dealt with. And the third was with respect to the King street pavement which was then falling into disrepair. The third matter was with respect to that King street pavement, because it was contemplated that some change should be made. Now, when we look at the legislation which was passed in 1875-76, and when we look at it with a knowledge of what the circumstances were at that time, it seems to me considerable light is thrown upon the legislation itself. We find, then, that in the first place the legislation provides that "where the block pave-

ment is now in use, and whenever the Corporation of the City of Toronto makes a change in the kind of pavement for the time being in use on any of the streets traversed by the Street Railway they shall be bound in the first place to construct, and when the same shall be worn out to renew the pavement on that part of the street which the said Company is bound to repair as aforesaid." And then we find in the first section "the Toronto Street Railway shall be bound to construct, renew, maintain, and keep in good order and repair the roadway between the rails and for one foot and six inches outside each rail, using for that purpose the same material and mode of construction as that which may from time to time be used and adopted for the remaining portion of the municipality in which the road is situated."

So that all these points were dealt with. The question of what material should be used between the tracks where the block pavement was laid was dealt with. The question as to the right of the City to continue the use of one kind of block pavement and use another was dealt with. So that all these matters were dealt with in that way. Well, then, that Legislature put upon them the duty of constructing and renewing block pavements, and freeing the Street Railway from that liability, none of the parties at that time contemplating the necessity for repair of permanent pavements. The next year the legislation was somewhat modified. The second sub-section of the Act of 1875-76 was repealed in terms. When you come to consider that provision here, they might as well have repealed the first and second sub-sections both; because virtually the second sub-section, which was substituted by the Act of 1877, covers all the matter legislated for in the first and second sub-sections of the former Act. Then there we get in the first half of the second sub-section of the Act of 1877, the legislation for the City. This was tentative legislation for the City. They proposed that the Legislature should pass an Act putting unqualifiedly on the Street Railway Company the obligation of construction, renewal and maintenance. "The said Toronto Street Railway shall be bound to construct, renew, maintain and keep in good order and repair the roadway between the rails, and for one foot and six inches outside of each rail, using for that purpose the same material and mode of construction as that which may from time to time be used and adopted for the remaining portion of the Municipality in which the road is situated." Nothing could be wider or more comprehensive than that. That takes the place, virtually, of both first and second sub-sections of the Act of the preceding session. If it were possible to turn to the Bills of the first Session of the House, it would be found that that section stopped just where I have stopped now; that the Bill proposed by the City did not make any exception whatever, but proposed to cast upon the Street Railway Company the duty of constructing, renewing and maintaining absolutely in all cases, without any exception whatever, in all cases of permanent pavement. The second part of the section was prepared for the purpose of limiting that, and it was prepared by the then Solicitor for the Toronto Street Railway, and it was proposed to the Legislature. It was said to the Legislature, "You must not cast upon us this new responsibility; you must not deal with us upon that footing at all, having regard to the state of affairs and the legislation which already exists." And this second part of the section, this proviso, was subsequently agreed upon between the representatives of the City and the representatives of the street railway, upon the understanding, and upon the distinct understanding at the time—I am speaking in regard to the Act of 1875-76 from instruc-

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tions, because at the time I had no knowledge of street railway matters; but with regard to the Act of 1877 I am speaking of my own knowledge—this was finally agreed upon as a compromise between the two opposite views, the City saying, "Your liability must be absolute in all cases as to construction, renewal and maintenance; and the Street Railway Company, on the other hand, saying that our liability must not be absolute in that way. This legislation must not take place. Then all parties at that time contemplated that with respect to permanent pavements, where permanent pavements were built that the matter of repair would be unimportant; that there would virtually be no repair effected during the life of the pavement. It was said by the representatives of the City, as a means of inducing the compromise, "You must remember this, that once you pave your permanent pavement there is an end of all outgo so far as you are concerned until that pavement was worn out." And the life of that pavement was said to be from 8 to 15 years by people who were supposed to know something about it. At all events, that is the history of this section; and, as I say, it was not intended then, not contemplated then, that there would be cast upon anybody any duty with respect to repairs, because it was supposed that they would never require to be made. That, of course, cannot affect, I suppose, your Lordship's mind as a matter of construction of the statute, I think, however, it does throw some light upon the meaning of the section. Then the first pavement that was laid down under these clauses was the Yonge street block pavement. The year before the Yonge street block pavement was laid the Street Railway Company—

ROSE, J.—If I am not to be assisted in construing these sections, why ought I to hear the statement of facts? I must discard those statements from my mind when looking at the sections.

MR. SHEPLEY—I think not altogether.

ROSE, J.—I can hardly, in giving my judgment in the first place, state facts which are not upon the agreement and the statutes, and then say that I am in no wise influenced by this statement of facts in construing them.

MR. SHEPLEY—What I suppose is this, whether the statement of facts is properly before your Lordship or not, what your Lordship ought to do is this, to know what was the state of affairs at the time this legislation was passed, or what was the difficulty to be got over.

ROSE, J.—Well, I must take that from the record before me, and the agreement. It comes up on a special case, practically.

MR. SHEPLEY—I am nearly through.

ROSE, J.—I am not desiring to stop you, only I think I will have to discard these statements from my mind.

MR. ROBINSON—I would not want to stop my learned friend, but it cannot affect it. The speeches made in introducing a Bill cannot be looked at, or statements made by the Ministers presenting the Bill.

MR. MCCARTHY—That is on the assumption that the Bill passes through two or three Houses, and some of the members who considered the Bill last might not hear the statements made in introducing the Bill.

MR. SHIPLEY—That is all I want to say with regard to the history of the legislation itself. I was going on to state what really will be properly admissible in evidence under the 7th and 8th paragraphs of the statement of defence, when there should be a reference to enquire into the facts. I am putting these statements hypothetically. The year before the Yonge street pavement was laid the Street Railway Company had made an alteration on Yonge street at the request of the City. They had taken up the single track which had been operated by a turnout at various points, and laid a double track from end to end of Yonge street, and they newly paved the space between the rails and the 18 inches outside the rails with a cobble-stone pavement. All that was torn up next year and a new pavement was laid down. The defence shows we appealed against that, but the City thought that was a proper sort of pavement to be put there, but the result was—which I think is material—was this, that the very first year the pavement was laid down, the very first time the frost came the block pavement, the blocks along the stringers upon which the rails were placed were swelled and were heaved up, so that there was a line of upheaval all along the railway track. Now, I think that is material under the 7th and 8th sections, because, to my mind, it is difficult to see how, after the City has attempted to lay a perfected pavement, assumed to lay a perfected pavement; if the City has erred in its selection of the kind of pavement, or has negligently laid the pavement, so that it becomes out of repair, it is difficult to see how we can be liable. The words "out of repair" are ambiguous, and not applicable, perhaps, to that state of things; but if the pavement becomes a wreck within a short time, so that an actual renewal and fresh construction have to be gone through within a few years, it seems to me that is not what the statute means by repair. Then it becomes altogether different, and something as to which the liability does not run. I do not propose to add anything to what my learned friend has said with regard to the construction of the section further than to state these facts, and just to add one or two words with regard to what he said upon the effect of section 47 of the Act of 1877. It seems to me that under that section the Legislature has virtually provided that every block pavement of which the street railway has to bear a share shall come under the local improvement regulation of the Municipal Act. That is, "the City shall construct, and in every case shall assess an annual rate, covering interest on sinking fund, etc." Now, if that is so, then that is not affected at all by what my learned friend, Mr. Robinson, said, that still the general public pay for the repairs, yet the adjacent ratepayers pay their share of it, because the street railway pays its share of the general taxes, just as the adjacent ratepayers pay their share of the taxes. They are assessed on their income just as the adjacent ratepayers, and the fact that the road bed is assessed does not affect the argument one way or the other.

MR. ROBINSON—It seems to me to be a case in which you can state the legislation in a very few words. When this Corporation was created, their obligation was to construct and repair, either to pave or to macadamize. The only difference is that when they came to use block pavement, and it being represented that block pavement might be more expensive than any ordinary pavement that was in contemplation at the time the original obligation was imposed, the City said virtually, "as to the construction of that your liability shall be limited." That is the whole legislation. That is the only change that was made. First they say, "If you are to occupy and use such a large portion of our street for your own

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use, you must construct it and keep in repair." Then twenty years afterwards a certain kind of road is designed or proposed which it is thought may be expensive. They object to pay for the construction of that; and they say as to the construction of that "Your liability cannot exceed \$2.50 per square yard." Now, is there any other change in the legislation. Upon what principle can you assert that there was any probable intention to exempt them from the repair? One would say that there could be no such intention, because if the road is permanent, the expenses are likely to be small; if the repairs had been an enormous burden, there might be some equity in the argument "Oh, you never intended for us to keep this road in repair." But if it is a road on which the repairs are to be lighter than usual, the presumption is not that they could not have intended to make them bear it. They say "We won't make the construction of it more burdensome than you were practically willing to agree to; that is to say, we will not oblige you to pay more than \$2.50 per square yard."

ROSE, J.—It may be that that is an average price.

MR. ROBINSON—It may be so; as a matter of fact, I am told that it is twice that. What do we find in that change to justify any sort of inference that there can be any intention to exempt them from repair, because there is no other change made? With regard to permanent roads; my learned friend Mr. McWilliams tells me that the idea in introducing the word permanent was this; on macadamized roads you have to put stones every year; that is what is done every year. On these roads they do not expect to do anything of the sort; therefore they were called permanent. Of course they must be kept up; that is to say, certain blocks will come up with frost or rotting.

MR. MCCARTHY—If it were properly made of proper material, there would be no rotting of blocks.

MR. ROBINSON—I think my learned friend is right to a certain extent. They were block paving in London when we were there last; and if you compare the two methods, you can see at once that there are two ways of doing it. The way they do it on Oxford street or Bond street it costs about five or ten times as much, and we cannot afford to do it. We were to do it as well as we could considering the circumstances of the country. I apprehend there is a way of making these roads, so that the blocks will not lift or rot or anything else, just as the English railroads are made twice as smooth as other railroads; but it is done at enormous expenses which can only be borne in a large city or wealthy country; but that is the idea involved in the word "permanent." I think my learned friend Mr. Shepley is hardly right in saying that you might as well have repealed the first and second sub-sections when you substituted the second one. I do not know that you could, because in sub-section 1 of the Act of 1876 it is said they are bound to use the same materials unless the City Engineer may think it is not desirable. That is not repeated in sub-section 2. Sub-section 1 of the Act of 1876 relates entirely to repairs; and it says they shall use for repairs the same material, unless the City Engineer chooses to except them. That is not repeated in sub-section 2. Then sub-section 2, as construed by the Act of 40 Vic., relates to construction and repairs, and puts in that proviso, but does not say anything as to the option or discretion which the Engineer may use in saying they need not do it. With regard to the argument which my learned friend has used as to contribution for accidents, your

Lordship will find in that case in 47 New York at page 486, that matter is dealt with "Only is the plaintiff liable" etc., etc.

Mr. McCARTHY—That depends on contract.

Mr. ROBINSON—We say clearly you have bound yourself to do that by contract. I am arguing that you are bound to do it. If you are not bound to do it, there is an end of the contract.

Mr. McCARTHY—We are not bound to indemnify by any express contract.

Mr. ROBINSON—But we say you are bound to repair by express contract: and that was exactly what they were bound to do in that case. When they say "You cannot sue us for the consequences you have been put to by reason of our neglect of contract because you ought to have done it as well as we, and we are both wrongdoers" the Court answer that, and say that is not a case where that applies. It is only this morning I read a long discussion as to the application of that doctrine, either 8 Seldon or 4 Barber; but they say it is limited to cases where the person is doing something consciously wrong. It must involve something in the nature of conscious wrong in order to make that maxim applicable.

Rose, J.—As to the negligent construction, Mr. McCarthy puts two propositions which I would be glad to hear you upon. He says that if the road-bed is permanent, and is not, in fact, permanent, you would be estopped from calling it permanent, and by saying it is not permanent, then they are not liable to repair; and that if it is of a permanent kind but improperly laid, then you cannot call on them to repair.

Mr. ROBINSON—I dealt with that in the beginning, and said almost all I could say. He says we call it permanent when it is not permanent, and we cannot, therefore, recover. I say we must be the judge of what is a permanent pavement. These are the words "Provided that where the Corporation of the City of Toronto adopts or uses on any street or portion of street a permanent pavement of wood or asphalt," etc. What is meant by that?

Rose, J.—Suppose you chose wrongfully to say something was permanent which is beyond all question not permanent?

Mr. ROBINSON—That must be a question of fact.

Rose, J.—He contends that if you should do that, they would not be liable for repairs for that.

Mr. McCARTHY—Supposing it were plank—that would illustrate my meaning—and not permanent.

Mr. ROBINSON—I do not see myself that they are exempted from their obligation to repair that, except on this principle that they may possibly say it is through your negligence, not through ours, it has fallen out of repair." They may urge that; though I see a good deal of difficulty in the application of it, because it seems to me it is practically dictating to the City what they were to do: but supposing we had put down a road so grossly faulty in its construction that it got out of repair before it had been there for a month.

Rose, J.—Take asphalt pavement, which we will assume to be a permanent

pavement; supposing it were put in such a position that after being down a day, it all breaks up; that would be permanent pavement with a faulty construction.

MR. ROBINSON—Yes.

ROSE, J.—He contends that they are not liable to you, but that you are liable to them, in the counter-claim.

MR. ROBINSON—I cannot see how you can establish any liability from us to them. Supposing it is asphalt; if that asphalt pavement breaks up within six weeks, that is not because it is not in its description a permanent pavement. It is because it is so constructed that although it ought to be permanent it is utterly fragile and perishing.

ROSE, J.—Could you call upon them to keep that in repair, supposing a section of ten feet square should fall out of repair in six weeks.

MR. ROBINSON—I do not wish to be understood as making any admissions as to the law, but I say that they would have a very strong argument if it were a clear case of gross negligence. Supposing they say this, "You have made us pay \$2.50 per square yard, which would not have put us to any expense if properly laid down; and you have constructed it so grossly that it did not last three weeks." I should suppose the City would have great difficulty in resisting it. It strikes me that way.

ROSE, J.—I should have thought they would be entitled to call upon the City to put down that which they agreed to pave.

MR. ROBINSON—I should think that would be reasonable. I should think it would be totally unreasonable for them to say, "We have taken from you the price of a good article, and built a bad article which you leased"; I should have thought they would not be obliged to take it.

ROSE, J.—That would cover both cases.

MR. ROBINSON—No: it would not cover as I see it. I see a difference between saying "What you have called permanent is not permanent by its description."

ROSE, J.—He says if you call it permanent you cannot say it is not permanent in description.

MR. ROBINSON—Your Lordship understands what I mean. Supposing we choose as an experiment—because we are following a thing which has been tried in Detroit for a year or two; people are satisfied with it and think it will last. Now, we say this is a permanent pavement: we in good faith adopt it and build it, but we are disappointed; it turns out it will not stand the weather. Now, you could not say that was not a permanent pavement within the statute.

ROSE, J.—Probably not; but supposing it was something that nobody really ought to call permanent, was called permanent from gross ignorance.

MR. ROBINSON—I should think it would come within the other. We cannot make a thing permanent by calling it so; but we can make a thing permanent in this sense: if it is in reality what everybody else thought at the time was permanent, and if it were constructed as such a pavement ought to be constructed. You probably know as well as I do, that that pavement which was put up the Avenue

was thought to be a thoroughly good pavement; but as a matter of fact, it all split across in every direction in a couple of years. That was not a permanent pavement within the statute.

ROSE, J.—It was an experiment.

MR. MCCARTHY—You cannot experiment at our expense.

MR. ROBINSON—I say we can; providing we are experimenting in good faith. We cannot try experiments which nobody else ever tried, and which we have no reason to believe are likely to succeed at all; that is negligence; but if we are making an experiment in good faith, which was a reasonable experiment to make, and which we make properly, then they cannot accuse us of negligence and bad judgment in trying it. They take their chances with us. Supposing after a great deal of work had been done, we discovered these block pavements would not answer, nobody would say the City was grossly negligent in constructing block pavements at all, because we can point to a dozen places in the States where they have tried it. But if we gradually came to the conclusion that these block pavements were a mistake, and not as permanent as they expected.

ROSE, J.—As to that point, can there be any theoretical or hypothetical decision? Would not there have to be a reference?

MR. ROBINSON—That is what I said to your Lordship; I said I did not know whether you would find it necessary to decide that point.

MR. MCCARTHY—It could not be decided unless you were ready to decide against us at once.

ROSE, J.—I am rather captivated with the argument advanced by Mr. McCarthy on that point.

MR. ROBINSON—I thought the only two points we were to argue was the liability to repair and the liability for accidents, and my learned friend suggested the other point; but I do not see how it comes up at present. If you are prepared to say that whatever the City chooses to call permanent shall be permanent, whether there was any sense in calling it so or not, and no matter how rashly they were constructed, they can make you pay for the repair, it does not strike me as reasonable.

ROSE, J.—I think as to that, we should have to have the facts before the law is decided.

MR. MCCARTHY—That depends upon the main question.

MR. ROBINSON—The main question, I take it, is the liability to repair at all, and next the liability for accidents, because if my learned friend could sustain immunity from any obligation to repair, there would be no facts to try; and if they can sustain immunity from any damages sustained by us, there is no use in going into the evidence. As to the other, I do not see how your Lordship is to write a judgment defining under what circumstances they would or would not be liable.

MR. MCCARTHY—That might as well be left open.

ROSE, J.—I think it would be better for me to express the opinion I have now

formed. It is true I might reverse it on further consideration : but I have a strong opinion, and if I give judgment now, my opinion might be reviewed during the next two weeks.

MR. ROBINSON—My learned friend did argue that they were not liable for these accidents because we were relieved from liability. Well, there is a direct decision in the United States, and another decision just put before me.

ROSS, J.—My opinion is it rests with contract.

MR. ROBINSON—As I understand it, the City is not exempted, not relieved, as against third persons and as against citizens. This case of *Haus v. Northampton*, 118 Massachusetts 74, decides that the town is primarily liable. We cannot get out of our statutory liability without express exemption.

JUDGMENT.

ROSS, J.—The first question depends upon the original agreement, and upon subsequent legislation. The third clause of the agreement is found in the by-laws of the City, page 106, and provides for construction and repair by the Street Railway Company. The Act of 1875 and 1876, referring to that agreement by sub-section 1, makes certain provision with respect to repairs. By sub-section 2 there is a clause in relief of the Corporation of the said Railway Company—it may be in relief—providing that "Where the block pavement is in use, the City shall be bound in the first place to construct, and, when the same shall be worn out, to renew the pavement on any part of the street which the said company is bound to repair, as aforesaid." It strikes me that that leaves the liability to repair in respect to the block pavement as it was, and relieved the Street Railway Company merely from liability to construct : and I would read sub-section 3—which commences "Subject to the provisions hereinbefore contained"—in the light of that provision, namely, that they were not bound to construct, nor were they bound to repair where the repair would amount to renewal, but they were bound to repair where the repair did not amount to renewal. And when the Act of 1877 was passed, 40 Vic., the liability of the Railway Company is put in express terms, generally still to construct, and then the words "renew and maintain" are introduced, with the other words "keeping in good order and repair." The proviso excepts from the direction to construct a permanent pavement. I think I will have to find express words to relieve them from their general liability to repair ; and when I find merely a relief from liability to construct, without any release from liability to repair, I do not see how that proviso can be read as relieving the Street Railway Company. I think that the liability to construct or renew is not placed upon them ; but I think that the liability for repairs which do not amount to renewal is left as it was before.

Then with regard to the question of accident, it seems to me that the whole matter rests in contract ; that there is liability on the Municipal Corporation under the Municipal Acts to keep the streets in repair : that by the agreement, and by the legislation, they entered into an agreement with another Corporation, by which that Corporation, as between themselves and the City, became liable to repair ; and the City can look to them to make good their contract in that respect. I think that if the Street Railway do not repair within the words of the

contract, as found in the agreement in the Act of Parliament, the City can compel them to do so. The City is not relieved from its liability, but may look over to the Street Railway Company for indemnification in case of accidents arising from such causes.

I agree as to the construction placed upon clause 16 of the agreement, argued by Mr. McCarthy, as not covering this branch of the case. I am glad to be relieved from giving any opinion as to the liability to the City with reference to permanent, or so-called permanent road beds, which are either not permanent in their character or not permanent by reason of faulty construction. It seems to me that only a hypothetical opinion could be given of such a case, and the fact would have to be ascertained by a reference.

I express this view that the parties may more speedily obtain the opinion of the full court in reference to the matter, or for further review.

MR. MCCARTHY—The order will be made, I suppose, under Rule 249 of the Judicature Act.

ROSE, J.—Any order the parties may agree upon.

MR. MCCARTHY—"If it appears to the court or judge," etc. (*reads rule*). It will be under that, I suppose.

MR. ROBINSON—Yes. Reading the case in 5 Chancery Division, this may come up at the trial, I see.

MR. MCCARTHY—Yes; this is the trial.

ROSE, J.—The result of this, if nothing further is done, would be to direct a reference. Then you may appeal from my order directing the reference on the ground that there is no liability.

MR. MCCARTHY—It would be declaring first that we were liable to repair, and that we were liable for these damages, and directing a reference to obtain it, and directing a reference on our part of the claim.

ROSE, J.—To ascertain the nature and character of the road bed.

MR. MCCARTHY—Yes; and further directions, in that case, would have to be reserved?

ROSE, J.—Further directions reserved.

MR. MCCARTHY—Subject to the result of the reference.

ROSE, J.—This declares, assuming my opinion should eventually prevail, that you are liable for repairs; and the amount would have to be ascertained by reference.

MR. MCCARTHY—Yes, unless it turns out that these repairs were owing to the negligent construction of the road; and then we would not be liable.

ROSE, J.—That, of course, should be further considered.

MR. MCCARTHY—Well, then, the first matter of reference would be as to whether they were liable. There would be no use their taking an account for the amount

of that, if in the end it appeared that the repairs were occasioned by the faulty construction.

ROSE, J.—But the contract is placed before me, and I construe the contract that you are liable to repair, bound to repair. Then on the reference to ascertain the amount of your liability, would come up the question as to whether the work had been done in such a manner as came within the provisions of the agreement. You would be liable if the road bed were permanent, and there were not faulty construction.

MR. MCCARTHY—But there is no declaration as to that. There would be some difficulty in framing the minutes as to that. We say that our liability depends on three things; first, the question of law, which is decided against us; and then on the evidence, which has not been given: and perhaps the evidence should be given and dealt with by your lordship before the other question is considered; because there should be no reference as to the amount until we know to what extent we are liable.

MR. ROBINSON—Then what we ask for is this; first we ask for a sum of \$6,000 aforesaid so paid. We are entitled to a reference to ascertain what was paid, and are entitled to get it unless they sustain the defence. We want a declaration that the defendants are bound to maintain and keep in good order and repair all of the roadways and crossings between their rails, and 18 inches on either side, as provided in the statutes, agreements and by-laws; and in default of their doing so they are bound to repay all moneys expended, and are liable to us for all accidents which occur in consequence of the non-repair. Now, we are entitled to that declaration.

ROSE, J.—I think we can get at it through section 47 of the Judicature Act. I rule as a matter of law that on the contract you are liable for repairs. I refer it under section 47, to enquire and report the nature and character of the repairs for the purpose then of determining whether they come within the liability under the contract; and also the amount, if anything—do you claim anything specifically in regard to the accidents, or is that merely declaratory?

MR. ROBINSON—Yes, large sums.

ROSE, J.—Also to enquire and report as to accidents. On that report there is a motion for judgment, on which motion the questions of law and fact are discussed. That being my present judgment, with a reference under section 47, the whole judgment may be reviewed.

MR. ROBINSON—As I understand it, your Lordship decides against them on this point of law. They set up two questions of law. On one you decide against us, and the other in our favor. First, they say the alleged want of repair complained of in this action is due to the fact that the kind of pavement adopted and used by the plaintiffs in the construction of the streets was totally inadequate, etc. I say that that is a defence which they cannot set up. They do not say we negligently put it there; but they say, "It is not a kind of pavement you should have put there. It is dictating to us what kind of pavement we should use." That I understand your Lordship to be in our favor upon.

MR. MCCARTHY—His Lordship wanted the facts upon that before he decided it.

MR. ROBINSON—I am quite willing to take the finding that the Master says in his judgment, that this is not the kind of road we ought to have used.

ROSE, J.—We can get rid of the question of deciding that now by referring for enquiry and report as to the nature and character of the roadbed, and the permanency of its construction.

MR. ROBINSON—Your Lordship sees exactly what that will lead to. That may lead to a long enquiry of enormous delay and expense.

ROSE, J.—Won't it result in that anyway?

MR. ROBINSON—No, I think not.

ROSE, J.—If Mr. McCarthy takes this position, "You have laid asphalt"—using the old illustration—"but it is not really asphalt; it is permanent in its nature, but not permanent by reason of its faulty construction:" won't that open up the same question?

MR. ROBINSON—The distinction, I think, is clear between the two questions.

ROSE, J.—I would rule in your favor. I think that they are entitled to put down permanent pavements where they want to.

MR. ROBINSON—It is not for them to set up the defence that block pavement is not the kind of pavements we should have put there.

MR. MCCARTHY—We say it is not a permanent pavement.

ROSE, J.—I do not know whether it is or not.

MR. ROBINSON—"The said alleged want of repair is also due to the fact that the plaintiffs were guilty of gross negligence in and about the construction of said pavement," etc. That I understand your Lordship to direct a reference upon.

ROSE, J.—Yes.

MR. ROBINSON—But upon the other point I think it is a pure question of law; and I do not wish to go into a reference to see whether, in the opinion of A., B., C., or D., we should adopt stone or block pavement. Whether we constructed it negligently is another point.

ROSE, J.—I am with you on that point. I think the discretion must rest with the Municipality as long as they exercise a reasonable discretion in the pavement they put down, because their liability is to the public.

MR. ROBINSON—I am content with that.

ROSE, J.—But it might be that laying down a certain kind of road surface, if you may call it that, or pavement, that a certain kind of road-bed would render that pavement not permanent. That is a possible fact; but that would come under the head of negligent construction again.

MR. ROBINSON—Oh, yes. I think the statute says what shall be permanent to that extent. It says, "A permanent pavement of wood, stone, asphalt, or other pavement of like permanent character."

ROSE, J.—Suppose that, without any road-bed at all, you laid down blocks, so that it is perfectly clear that is not permanent.

MR. ROBINSON—Oh, that would be negligent construction, no doubt.

MR. MCCARTHY—We say that this pavement was totally inapplicable to and inadequate for the purposes of any street on which the defendants were operating their line of railway, etc.

ROSE, J.—There is no other kind than block as a matter of fact?

MR. MCCARTHY—No, I believe not.

ROSE, J.—It comes to a question after all whether block pavement may be a permanent one upon that road-bed.

MR. MCCARTHY—As a matter of law, what it comes to is this, that we cannot say that they are using a kind of pavement which is totally inadequate to the streets it is put upon.

ROSE, J.—I would not like to put it in those words.

MR. MCCARTHY—That is what my learned friend is asking your Lordship to do.

ROSE, J.—I would think they have a perfect right to choose the kind of pavement, using their own discretion; but if it is impossible to get a road-bed that would support such a pavement, why that would be negligent construction.

MR. MCCARTHY—We want to push it further than that; we say their discretion must be a reasonable one. They must have regard to the fact that there is a street railway there, and a break in the road; and we have warned them that this block pavement will not answer broken up in that way.

ROSE, J.—Well, then, it would not be permanent.

MR. MCCARTHY—It may be it is well put down; but we say that in the exercise of reasonable discretion no person knowing anything about it would say it is a proper thing to put down. The consequence is they are putting us to an expense year after year which should not be incurred. We want to raise that question.

ROSE, J.—Could not that be raised under that enquiry as to whether the block pavement is laid down as a permanent pavement?

MR. SHEPLEY—Supposing the first street was laid with cedar block pavements, was laid in good faith by the City, and in the exercise of reasonable discretion. Supposing that within a year of that time, and before any other pavements were laid, it became perfectly demonstrated that it was impossible to lay such a pavement as for the purposes of the street, where the Street Railway tracks were laid, and supposing that were pointed out to the City—

ROSE, J.—Then they would be laying as permanent that which was not a permanent pavement.

MR. SHEPLEY—Supposing in the face of that they go on whenever they build another street to construct another pavement on another street in the same way, are we not justified in saying that they are laying down a certain kind of pave-

ment which is totally inadequate and not permanent for the purposes of the street.

Mr. McCARTHY—What would be permanent on a street where the railway was not, would not be permanent on a street where the railway runs.

ROSS, J.—Would not it be negligent to construct a road-bed of that sort?

Mr. McCARTHY—Well, not negligent, perhaps; it would be a very improper exercise of discretion, and we say the statute in imposing this liability means that that discretion should be exercised reasonably.

ROSS, J.—Applying it to the facts; King street was laid a long time ago; and the blocks unheaved on the side of the tracks. Various theories are given for that. Assume that, having experimented on that, and it having become manifest that it is impossible for that kind of pavement, with a track running down the side of it, to become permanent, they should go and lay Yonge street in the same way, would it not be open to be urged that when they laid Yonge street they were not laying a permanent pavement?

Mr. McCARTHY—I think not. I think a permanent pavement would be with reference to what is known as a permanent pavement.

Mr. ROBINSON—We say permanent is not used in that sense at all here; "permanent pavement of wood, stone or asphalt," etc., as used in contra distinction to the old kind of road of macadam.

Mr. McCARTHY—Although admitting that would be permanent pavement within the statute, we say there is some other right reserved to us; and that is that they shall exercise reasonable discretion as to the kind of pavement.

Mr. ROBINSON—In other words, because the strict letter is there, we must put down a different kind of pavement.

Mr. McCARTHY—Yes.

ROSS, J.—I should think that has a great deal of force, because you have a contract with them to pay for a certain section of it, and to put it in repair; and therefore it ought to be with reference to that that it is put down.

Mr. ROBINSON—That is a question which we regard as one of law, about which we do not want a reference. We say they cannot say "that may be the best possible pavement for another street; but inasmuch as we are going to have our Street Railway upon it, you cannot have it." We say they cannot take that position.

Mr. McCARTHY—We ask a reference to ascertain whether as a fact this was not a pavement totally inapplicable to and inadequate for the purposes of the streets upon which our road was being operated.

ROSS, J.—It seems very hard if you have not a right to raise that question. I think I will direct a reference as to that, and leave the City to move.

Mr. McCARTHY—Then there will be a reference upon section 47 on that point, and also upon section 18 as to the other, and then the matters can come up afterwards.

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ROSS, J.—The facts will be found, and on those findings a formal motion for judgment is made; and on that motion for judgment the law can be argued.

MR. ROBINSON—We say practically that section 7 forms no defence; that you cannot dictate to us, because you have the strict letter here, what kind of pavement you shall lay.

ROSS, J.—I decide against that. You may move against the decision. I direct a reference under that, leaving the question, if it is not otherwise disposed of, to be further argued upon the motion for judgment; so you will have the benefit of it.

MR. ROBINSON—It strikes me that it is a matter which we should have argued as a question of law first.

ROSS, J.—In order that there may be no mistake in the result, all these questions of law as to your liability on the report may be argued on the motion for judgment.

MR. ROBINSON—I should wish to argue this before we come to the report.

ROSS, J.—No doubt you will, but if by any accident any matter of law is not disposed of now, it may come up on the motion for judgment, so that both parties are fully preserved if there is anything which escapes attention. It will be open on the motion for judgment.

FINDINGS OF THE COURT.

The following are His Lordship's formal findings herein:—

"I find as follows:

"1. That the defendant Company is bound to repair permanent pavements.

"2. That it is liable to pay the plaintiff such damages as it may suffer or pay by reason of non-repair.

"3. That the plaintiff is bound to use reasonable care, skill and diligence in selecting pavements to be laid as permanent pavements. For example, if the laying of the block pavement on King street demonstrated that a block pavement on a street on which rails were laid by the defendant Company would not be permanent, the plaintiff, as against the defendant Company, would not have the right to lay another street used by the defendant Company with block pavement as a permanent pavement; and if negligent could not call upon the defendant Company to pay for construction or to repair as for a permanent pavement, and would be liable to such Company for loss occasioned by such negligence.

"4. That the plaintiff is bound to use reasonable care and skill in the construction of permanent pavements; for example, if pavement, permanent in its nature—such as asphalt—were so negligently constructed as not to be permanent, the plaintiff could not call upon the defendant Company to pay for construction or to repair, and would be liable to the defendant Company for loss occasioned by such negligence.

"I direct a reference to under section 47 J. A. O.
for enquiry and report :

"1. As to cost of repairs made by the plaintiff to permanent pavements on the streets used by the defendant Company.

"2. The loss or damage suffered or paid by the plaintiff for or by reason of accidents caused by the neglect of the defendant Company to repair.

"3. Whether the plaintiff has been negligent in selecting pavements as permanent, and if so, the loss or damages sustained by the defendant Company from such negligence.

"4. Whether the plaintiff has been negligent in constructing permanent pavements, and if so, the loss or damage sustained by the defendant Company from such negligence.

"By consent I further order the referee to be paid the fees payable to a professional arbitrator as costs in the cause.

"JOHN E. ROSE, J."

CXXXII.

REPORT OF SPECIAL SUB-COMMITTEE OF COMMITTEE ON WORKS.

To the Chairman and Members of the Committee on Works :

GENTLEMEN,—Your sub-Committee appointed on the 28rd February to consider and report upon the findings of His Lordship Judge Rose, in *re* the suit of *The City v. The Toronto Street Railway Company*, beg respectfully to submit the following correspondence for consideration, pending a recommendation from your Committee:

"A."

Toronto, 3rd February, 1887.

Toronto v. Street Railway Company.

BLOCK PAVEMENTS.

W. G. McWilliams, Esq., City Solicitor, Toronto :

(Without prejudice.)

DEAR MR. McWILLIAMS,—I am prepared to enter into such an arrangement with regard to outstanding claims against the City as was proposed by you the other day, that is—

(1) The claims of persons who have sustained damage by reason of the state of the pavements may be settled by the City and the Street Railway Company without resorting to the defence of such suits.

(2) Mr. Coatsworth for the City and Mr. Franklin for the Street Railway Company to jointly investigate claims made, and pronounce upon and agree to the amount to be paid in each case.

(3) The City then paying the amount so arrived at to the claimant, that amount is to be accepted as the measure of the City's claim against the Street Railway Company in each case.

(4) All defences, except as to amount, to be open to the Street Railway Company in every case as though this arrangement had not been made. For example, we do not admit the City's liability to pay the particular claimant, or that the damages were caused upon our part of the pavement, or that we are liable to indemnify the City.

Perhaps if this is satisfactory it would be well to draw up a consent in the suit embodying these provisions.

Please let me hear from you.

Yours truly,

GEO. F. SHEPLEY.

"B."

TORONTO, 5th February, 1887.

Toronto v. Toronto Street Railway Company.

W. G. McWilliams, Esq., City Solicitor, Toronto:

DEAR MR. McWILLIAMS.—UPON consideration I see no objection to the proposed modification of the 4th clause of my letter of 3rd inst., that is, Mr. Coatsworth and Mr. Franklin agreeing upon a report of the facts, you and I settling whether upon the law they come within the scope of this suit. Of course this arrangement is not to prejudice us in respect of appealing from the judgment given to-day.

Yours faithfully,

GEO. F. SHEPLEY.

"C."

TORONTO, February 9th, 1887.

Toronto v. Street Railway Company.

W. G. McWilliams, Esq., City Solicitor, Toronto:

DEAR SIR.—Referring to the conversation which I had with Mr. Robinson and yourself on Saturday last, I have to say that a meeting of the defendants' Board was held to-day, at which I was authorized to renew and complete negotiations looking towards a final and satisfactory settlement of all matters in dispute. I may say that I am prepared to meet you in the broadest and fairest way in an effort to adjust these differences so as to put the whole pavement question upon a satisfactory and fair footing.

I shall be glad to meet yourself or Mr. Robinson, or any representative of the City, for the purpose, first, of establishing a basis, and second, of settling details. I trust I shall be met in the same spirit.

Yours faithfully,

GEORGE F. SHEPLEY.

"D."

TORONTO, February 22nd, 1887.

*Toronto v. Toronto Street Railway Company.**W. G. McWilliams, Esq., City Solicitor, Toronto:*

DEAR SIR,—Referring to our conversation of yesterday, in which you asked me to embody in a letter the outline of a scheme for the adjustment of the matters in dispute, to which the defendants would be willing to assent, I have to say that, while I think a preliminary interview between myself and some representative of the City would have been at once more satisfactory and more expeditious, yet I have no objection whatever to assume the initiative, and to say what in my view would be a fair arrangement between the parties—of course subject to details being afterwards discussed, agreed upon, and filled in, and also to such modifications as may be suggested on the part of the City, and be found desirable in the interest of a fair settlement.

In the first place, starting with the judgment of Mr. Justice Rose as a basis, we would be entitled, upon establishing certain facts upon the reference which he has directed, not only to be absolved from the claims for past repairs, amounting to some \$4,000, and the claims for damages to third persons, but also to be repaid what we have heretofore paid in respect of construction of block pavements, a very large sum indeed, and we should be entitled to cast upon the City for the future the maintenance of these pavements during their life, and the payment of the debentures still to mature for the cost of the work.

1. Now, as to these matters, I propose that each party should relieve the other from all liability. That is, we will seek no refund of what we have heretofore paid, and the City will submit to the comparatively small outlay already made for repairs and damages. Future maintenance will not need to be provided for in view of subsequent clauses of this proposal, and the City will provide for all unmatured debentures.

2. In the second place, I propose that as soon as the streets are open for wheel traffic the space between the rails and for eighteen inches outside the rails shall be laid at our sole expense with stone pavement wherever wooden block pavements are now laid or may hereafter be laid by the City, which shall be maintained for all time by us and at our sole expense. The work to commence at once upon those streets or portions of streets where the need for action is most urgent, and to be completed as to all within such reasonable time as may be agreed upon.

3. In the third place, I propose that within a certain radius to be agreed upon, covering what may be called the heavy traffic district, these stone pavements shall be constructed of stone blocks of the kind and laid in the method which was adopted last year upon Church Street, or stone blocks of some similar kind, laid in some similar method, except (in the case of double tracks) the space of three feet wide between the two lines of track, upon which no horse or vehicle ever travels, and which would be paved in the manner provided below for the districts outside the heavy traffic radius. The whole work to be of the most modern and

approved construction, and to be subject to the certificate and approval of the City Engineer or other officer to be agreed upon. Outside the radius so to be agreed upon, and where the traffic is light, and within it, as to the space three feet wide mentioned above, the pavements to be constructed over the Company's portion of the street, as defined above, of cobble stone laid in the most approved manner and subject to approval, as in the case of the stone block pavements. This will be virtually the same pavement as the Company laid upon Yonge Street the year before the cedar blocks were laid there, on the occasion of their building a double line of track upon that street.

4. In the fourth place, I propose that the money for the construction of these works shall be found in the first instance by the City, who shall issue debentures for the purpose, assessable against the Company, for the whole cost, extending over a period of twenty-five years. I am prepared to consider favorably any modification of this clause which may be thought desirable in the case of the pavements outside the stone block radius.

5. In the fifth place, I propose that if the Company undertakes the actual construction of the works, they shall be subject to the approval of the City Engineer, or other person designated by the City only; while, if the City undertakes such actual construction, there shall be associated with the City Engineer some duly qualified engineer to be named by the Company, and that in the respective cases the certificate or joint certificate, as the case may be, shall be final and conclusive upon all parties.

6. As I have, I think, already said, the maintenance for all time shall thereafter be upon the Company.

These proposals, I think, embrace the salient outlines of such a scheme as will satisfactorily cover all the difficulties which now exist. As I have said in a former letter, my desire is to make a perfectly equitable and fair arrangement, and to meet you for that purpose in the fairest and frankest spirit. I believe that if both parties are willing to approach the discussion of the matter with that desire and in that spirit, there need be no difficulty or delay in arriving at a satisfactory result.

I shall be glad to hear from you or to meet you at any time, either to discuss the scheme I have proposed, or to listen to and discuss any other scheme, or any modifications of this which suggest themselves to you or your clients.

Should the negotiations unhappily result in nothing, which I sincerely trust may not be the case, this letter is of course without prejudice to the Company's position in the present litigation or otherwise.

I am, yours faithfully,

GEO. F. SHEPLEY.

"E."

TORONTO, 23rd February, 1887.

City of Toronto v. The Toronto Street Railway Company.

DEAR SIR,—As you are aware, this case came on for trial before the Hon. Mr. Justice Rose, at the last Assize. The argument on the question of law was had

on the 5th February instant, and at the close of the case His Lordship found on the several questions raised by the pleadings, and directed a reference under section 47 of the Judicature Act for a report on the facts :

1. As to kind of pavements adopted and their suitability to streets upon which Street Railway tracks are laid down, and the negligence or otherwise of the City in continuing to lay down wooden block pavements after same had been demonstrated to be unfit for streets upon which Street Railway tracks were laid down.

2. As to whether proper skill, etc., had been used in constructing the pavements.

In order that you and your Committee may clearly understand the case, I enclose herewith a copy of the Judge's findings endorsed on the record, and also a copy of the record.

Both before and after the argument I had propositions from Mr. Shepley, the Solicitor for the Company, looking to a settlement of the matters in dispute, and the matter has now reached a stage where I think it is no longer a question for Solicitors but for business men to consider. Mr. Shepley has put his propositions in writing, and I now forward same for the consideration of yourself and Committee. (See Enclosures.) He make two propositions :

1st. For settlement of claims arising from accidents, pending the determination of the litigation in case no settlement is arrived at.

2nd. Proposition for settlement of all differences and future maintenance of roadways.

As to the proposition for the settlement of claims with claimants, where claims arise out of accidents caused by want of repair of that part of the roadway which the Company are under their contract bound to maintain and repair, but which they have neglected and declined to repair for reasons set up in their statement of defence, I may say that I have considered it, and have shewn same to Mr. Robinson, and we are agreed that pending the settlement of the disputes some arrangement should be come to between the City and Company whereby the City may be able to deal with these claims, and we recommend that an agreement be entered into between the parties for that purpose. We think the arrangement as foreshadowed in the two letters of Mr. Shepley to myself, dated the 3rd and 5th February instant respectively, will meet the circumstances of the case, and protects the interests of all parties. If it meets with the approval of your Committee and the Council, I will have a formal agreement prepared in accordance with these letters.

As to the proposition for final settlement of disputes and future maintenance of roadways, referred to in Mr. Shepley's letters of the 9th and 22nd instant, we do not consider it fitting that we should make any further recommendation than to state that we think it highly desirable in the interests of all parties concerned that a settlement should be come to, if possible, which will finally dispose of all matters in dispute, and provide for putting the streets in a good and permanent state without delay. The nature and terms of settlement are for the Committee and the Council to arrange. I would beg to suggest that a sub-committee of the Committee on Works should take these matters into consideration, and if any

settlement is to be arrived at it may be come to as speedily as possible. I may also add that Mr. Shepley has stated to me that he is ready and willing to meet any representatives of the City at any time which may be suitable, and he asks that no time should be lost:

- (1) Because the roadways must be put in order as soon as spring opens.
- (2) If any settlement is to be come to, it is better to have it effected before incurring further costs in litigation.

Please instruct me as to—

1st. What I am to do with reference to the proposed settlement of claims arising from accidents.

2nd. What I am to do as to the judgment and findings of the Hon. Mr. Justice Rose.

I may say as a matter of precaution and to preserve the City's legal rights in the meantime, I am giving notice of appeal to the Court of Appeal for Ontario, and this will not require to be acted upon for a couple of months, and in the meantime your Committee and the Council may be able to settle the difficulties. If not, then the litigation can go on.

Yours truly,

W. G. McWILLIAMS,

City Solicitor.

Wm. Carlyle, Esq., Chairman Committee on Works.

[NOTE.—The Minutes of the Committee do not shew that any action was taken on the above report.—Ed.]

CXXXIII.

The following correspondence subsequently took place:—

Toronto, 18th July, 1887.

W. G. McWilliams, Esq., City Solicitor:

DEAR MR. McWILLIAMS,—Since speaking to you this morning I have been instructed to say to you that the City are quite at liberty to go on with the four street crossings mentioned—(1) King and Yonge, (2) Yonge and Queen, (3) King and York, (4) King and Sherbourne—at once, leaving the question of the ultimate liability in abeyance to prior result of pending suit or settlement. The City meantime to bear the cost without prejudice to any rights they may have against the Company. The work to be done, as agreed upon at last meeting of Sub-committee of Board of Works, by electric light, while street railway traffic is suspended—say between midnight and six a.m.—and the traffic to be as little impeded as can possibly be managed.

You are at liberty to proceed at once upon these terms without waiting for the preparation of any new formal agreement. This will, I trust, be satisfactory. All necessary notices by the City to be assumed to have been duly given.

Yours faithfully,

GEO. F. SHEPLEY.

CXXXIV.

JULY 28rd, 1887

W. G. McWilliams, Esq., City Solicitor :

DEAR SIR,—I return you Mr. Shepley's letter of the 13th enclosed in yours of the 14th inst. I have kept a copy of it, and will lay it before the City Engineer on his return to town.

Faithfully yours,

ALAN MACDOUGAL,

Assistant City Engineer.

CXXXV.

JULY 29th, 1887.

W. G. McWilliams, Esq., City Solicitor :

DEAR SIR,—I enclose you minutes of proposed agreement to be submitted to the Solicitor of the Toronto Street Railway Company as agreed to at meeting of Subcommittee yesterday, along with detailed statement of roadways on which the tracks are laid.

Faithfully yours,

ALAN MACDOUGAL,

Assistant City Engineer.

ENCLOSURE.

DRAFT MEMO OF AGREEMENT.

1. The Street Railway Company shall pay to the City the amount expended for repairs already done by the City upon the portions of the streets occupied by the Street Railway Company's tracks.
2. Also whatever money the City has paid or is liable for by reason of the non-repair of these streets.
3. The Company to pay all debentures outstanding or to be issued for pavements constructed under the existing agreement between the City and the Company.
4. The City to construct, re-construct, renew, maintain and keep in repair at its own cost the pavements on the portions of all streets at present occupied or that may be occupied by the Street Railway Company with their tracks. A yearly rental to be charged by the City for the use of the said streets; the amount of such rental to be agreed upon by the parties, or failing agreement, to be fixed by arbitration.
5. When reconstruction or renewal is necessary on any roadway occupied by and for which the Street Railway Company are assessed, the Company shall be allowed for all material on the roadway under reconstruction that can be used on the work.

CXXXVI.

DECEMBER 30th, 1887.

W. G. McWilliams, City Solicitor, Toronto :

DEAR SIR,—I have gone carefully through the proposition of the Sub-committee of the Committee on Works, together with the statement accompanying the same, and the whole matter has received the careful consideration of the Board of the Street Railway Company. We deem it advisable, in the interest of a final and satisfactory settlement, that a meeting should be had between the sub-committee and the President and Secretary of the Street Railway Company and myself, at which the matter may be discussed in all its bearings.

The central feature of the Sub-committee's proposition, viz. : the assumption by the City of the sole control of all the streets and the payment of a yearly sum by the Company to the City in respect of their occupation, is thoroughly acceptable to us, and I think I may say that if you, upon your side, are in earnest, as I think you are, in your desire to have all questions arising out of the difficulties which surround the relations of the City to the Company with regard to the management of the streets, settled, the matters in question will be adjusted and put upon a sound basis, satisfactory to both parties. The interview which I suggest is desirable, as we think, with the view of settling the details of the whole scheme. There are, as you are aware, many matters which may conveniently be, and certainly ought to be, embraced in the settlement. I do not refer to any of the disputes between the City and the Company, except such as have arisen out of matters connected with street management. These, we think, should all be dealt with at the present time. Among these matters I may mention the following for the consideration of yourself and the sub-committee before the proposed meeting : (1) The claims of the City in respect of moneys expended for repairs of block pavements. (2) The claims of the City in respect of damage collected from the City by third persons. (3) The claims of the Company in respect of the alleged improper selection and laying of block pavements. (4) The claims of the Company in respect of material taken by the City. (5) Such claims as the Company might, under the provisions of the various Acts, have in the future with respect to material. (6) The adjustment of matters with respect to past payments upon debenture account. (7) The arrangements to be made for the payment of future debenture assessments. (8) The claims of the Company in respect of injury caused by delay and mismanagement in the construction of sewers. (9) The fixing of the sum to be paid by the Company to the City for the future, under the new management. Besides these matters, probably other matters will occur to yourself and to members of the sub-committee. All matters in any way connected with street management as between the City and the Company should, as we think, be now disposed of for all time.

While the Company is willing to make all reasonable concessions in order to arrive at a fair settlement, it must, I think, be admitted that all the matters I have mentioned above, are matters which do require consideration, and, while I do not say to what extent, if at all, the Company may, upon consideration and discussion with your Committee, yield upon any of the matters mentioned above, yet all these matters should be discussed and adjusted in some way. Otherwise, we are not settling, but only postponing the settlement of the questions which have caused difficulty for the last six or seven years.

Some of these matters, perhaps all of them, might, I think, with advantage be left to a board of arbitrators consisting of, say, an engineer to be named by the City, another engineer to be named by the Company, and a third arbitrator or umpire to be named by the two engineers so appointed. I throw out this suggestion as to the constitution of the board of arbitrators, but I may say at once that we are willing to be bound by the decision of any competent board of arbitrators fairly constituted. Will you kindly lay this before the Sub-committee and see if a day can be fixed for a meeting? I do not suppose that the whole matter can be adjusted at one sitting, but we are prepared to take the matter up and pursue it to a close without any delay.

Will you kindly arrange in the meantime for a further delay in the enforcement of the debenture assessments for the present year? The time, as you recollect, was extended until the 31st instant. There will, I suppose, be no difficulty about this. If there is to be any let me know at once, so that I may take such steps as I may be advised. I do not, however, anticipate any difficulty with regard to this, as your Committee will doubtless see the advisability of not enforcing payments which are in dispute in a suit still undetermined.

Yours truly,

GEO. F. SHEPLEY.

CXXXVII.

In Council:—

The following communications were read:

From His Worship the Mayor informing the Council of the result of the suit instituted against the Toronto Street Railway Company by the City to prevent the Company from clearing their tracks of ice and snow, and throwing the same on the side of the streets on which their tracks are laid.

From His Worship the Mayor, relating to the petition of the Street Railway Company, praying for the repeal of By-law No. 1264, which provides for the placing of conductors on all cars.

(Minutes Nos. 111, 112, Minutes of Council, February 13th, 1888.)

CXXXVIII.

In Council:

The following communication was read:

From the President of the Toronto Street Railway Company, with reference to the proposed extension of the tracks of the Company across the Don River and up Broadview avenue to Danforth avenue.

(Minute No. 118, Minutes of Council, February 13th, 1888.)

Gentlemen

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CITY OF TORONTO v. TORONTO STREET RAILWAY CO. 173

Mayor's Message.

MAYOR'S OFFICE,

Toronto, February 18th, 1888.

Gentlemen of the Council :

Immediately on taking my office as Mayor of this City my attention was called to the unsatisfactory and, in many cases, dangerous state of the streets in the City occupied by the tracks of the Toronto Street Railway Company. Having made enquiry as to the cause of the difficulty, I found that the trouble was largely caused by the Company clearing the snow and ice from their tracks and the centre of the roadway and throwing it over upon the sides of the roadway, between their outside tracks and the curbing and sidewalk. The Honorable Frank Smith, President of the Company, in an interview which he had at my office with myself and certain of the Aldermen and officials present, having stated that in removing the snow and ice from their tracks and throwing it on the sides of the street in this objectionable manner, the Company were acting within their legal powers and rights, and that there was no obligation on the Company to cart it away from off the streets. I consulted with the City Solicitor, and I have also obtained the opinion of Christopher Robinson, Q.C., a copy of which I forward herewith. The effect of the advice of the Solicitor and of Mr. Robinson's opinion was that the Company had not the right to remove the snow and ice from their tracks and throw it upon the sides of the street, when by so doing they would obstruct the streets and make them dangerous and unfit for public use. I thereupon conferred with the City Engineer and the City Commissioner as to whether the Company had, as a matter of fact, by throwing the snow and ice from off their part of the roadways upon the sides thereof, between their tracks and the sidewalks, obstructed the streets and made them dangerous and unfit for public use, and as a result of that conference I directed an information to be laid against the Company before the Police Magistrate.

The matter came up for a hearing this morning and the Magistrate dismissed the case, as the Solicitor informs me, on the alleged ground that the evidence did not satisfy him that the Company had been guilty of obstructing the streets, and thereby making them unfit for public use. It appeared, as I am informed by the City Solicitor, that the obstruction of the streets arises from these causes :

1st. The rising of the cedar blocks between the rails.

2nd. The Street Railway Company throwing the snow and ice from off their tracks, covering a space of twelve feet in the centre of the street, upon the side of the roadway, between their tracks and the curbing.

3rd. The property owners on either side of the street throwing the snow which came from their roofs and sidewalks (which latter in the case of King and other leading streets are twelve feet in width) upon the roadway, between the street railway track and the curbing.

The Magistrate held that inasmuch as the Company were bound by their charter and amending Acts of the Legislature relating to the Toronto Street Railway to remove the snow and ice from off their tracks and run their cars for the accommodation of the public, some consideration should be shown to them, and that in the absence of positive evidence of their creating such an obstruction as to render the streets dangerous, he would not convict.

Thus the matter rests for the present. In the meantime the primary liability for the repair of the streets rests on the City, and I therefore recommend that immediate steps be taken by the City Engineer and the Committee on Works to put the streets of the City traversed by the lines of the Street Railway in a safe and passable condition, and that a separate and accurate account be kept as far as possible of the cost. This can afterwards be made part of the City's claim against the Company should it be ultimately determined that the Company are liable for the existing want of repair of the streets. No time should be lost in bringing the pending negotiations with the Company to a conclusion and settlement, and failing that, the pending legal proceedings should be proceeded with as rapidly as possible. It is highly desirable, as well in the interest of the City as of the Company, that a definite settlement should be arrived at with as little delay as possible. I append hereto a copy of the questions submitted to Mr. Robinson and his reply.

E. F. CLARKE,

Mayor.

ENCLOSURES.

"A."

QUESTIONS SUBMITTED TO MR. CHRISTOPHER ROBINSON, Q.C., *re* TORONTO STREET RAILWAY.

1. Can the City prevent the Company cleaning off the snow from their tracks falls to the depth of six inches? How is the question of the depth of snow decided? Who is to decide this question? Does this apply to a single fall of snow?

2. What is he to test and approve of under the Act of 1878, under the words "test and approve"? Does he test and approve of the apparatus or the removal, or manner of removal?

3. Have the Company the right to remove the snow and ice from their tracks and throw it on the other part of the roadway?

4. If they can do this, is there any limit to that right? Can they continue to do this when the snow and ice on the sides of the street become so deep as to become dangerous by throwing the ice and snow from the tracks upon the side of the street?

5. Can the City compel the Company to remove the snow and ice from the street altogether by carting or otherwise, when the throwing of it on the sides creates an obstruction?

6. What can the City do to abate the nuisance?

7. The City Engineer having reported that the Street Railway Company are creating a nuisance by throwing snow and ice from their tracks into the streets traversed by the Street Railway Company, what steps can be taken to compel the Company to abate the nuisance?

"B."

MR. ROBINSON'S OPINION.

My opinion is asked as to the obligations and rights of the City and Street Railway Company respectively with regard to the removal and disposition of snow upon the track.

By the By-law of the City respecting street railways, No. 858, passed in July, 1861, "When the accumulation of snow or ice on the railway shall be such as to impede the traffic, every means shall be used to clear the track, and while impeded sufficient sleighs shall be provided for the accommodation of the public."

This is found in the original resolutions passed on the 14th of March, 1861, by which the City accepted the proposals of Mr. Easton to construct and operate street railways in Toronto. It became binding upon the present Company, and continued unaltered until 1869.

In that year the Legislature of Ontario, by the 32 Vic. cap. 81, sec. 1, which authorizes the sale of the railway, added this provision, "Provided always, that such purchaser, or any proprietor of the railway for the time being, when snow falls to the depth of six inches or upwards, shall not at any time between the 1st day of December and the 15th day of March following, plough up or remove the snow from the track of the said railway or from the streets in which such tracks are or may be hereafter laid."

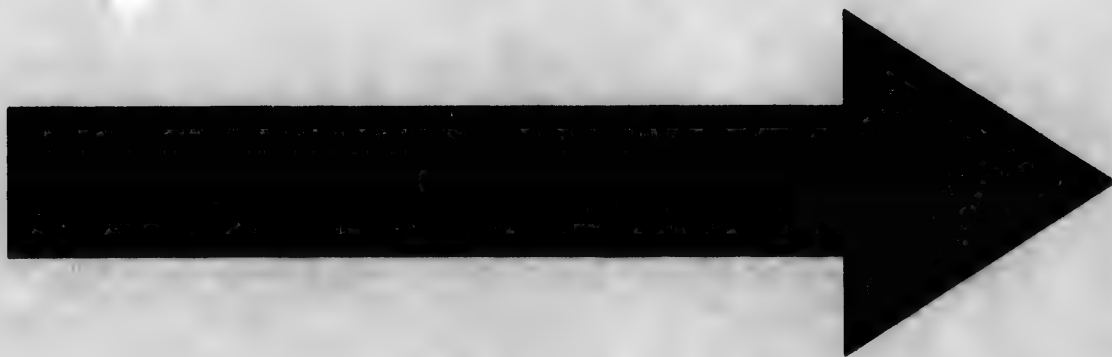
In 1876 the Legislature, by the 39 Vic. cap. 63, sec. 4, added to this the words, "Unless by the use of the most improved and effective apparatus obtainable for that purpose, and subject to the test and approval of the Engineer of the City."

These are the only provisions of which I am aware dealing directly with obstructions by snow or ice.

I do not think that any of them authorize obstructions of the highway outside of the track so as to make it unsafe for ordinary traffic or create a nuisance, and there are other provisions which seem to show that this was not intended. I refer to the resolutions already mentioned, Nos. 3, 4, 16; Mr. Easton's covenant, No. 5, in the agreement of the 26th March, 1861, which is embodied in the By-law; No. 4 of the enacting clauses in the By-law, and to 24 Vic. cap. 83, secs. 14, 15.

The effect of the By-law I take to be that every reasonable and legal means shall be used to keep the track clear in winter, so as to prevent the traffic by means of the cars and rails from being impeded, but the Company is not required or permitted to avoid this by means which impede all other traffic and render the street dangerous.

The first added provision may be difficult to construe. It applies only "when snow falls to the depth of six inches or upwards," and in that event prevents any removal of it. The expression "when snow falls," to a certain depth, as used here, means, I think, when snow comes, or when there is snow to that depth. The Company must then not remove it, the restriction being imposed, I suppose, because it was thought that keeping the track clear would then be impracticable except by means which would render the rest of the street impassable or danger-



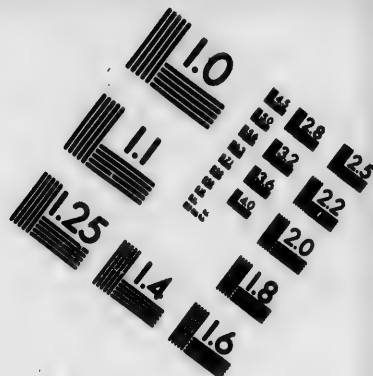
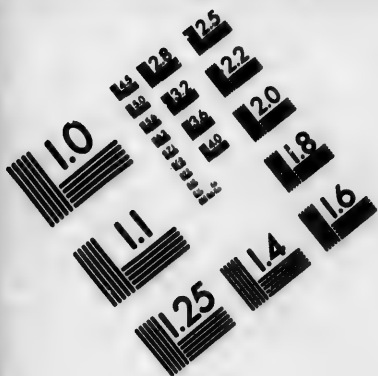
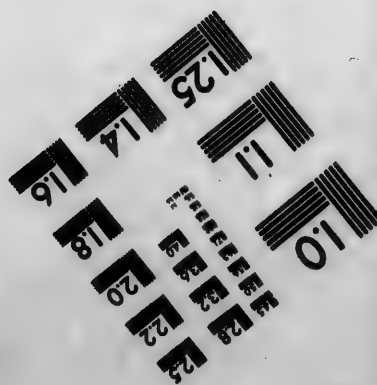
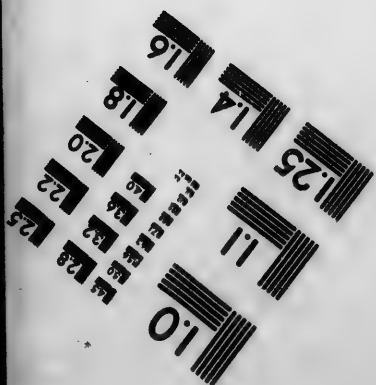
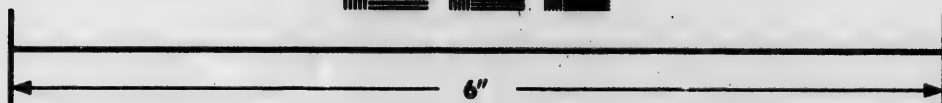
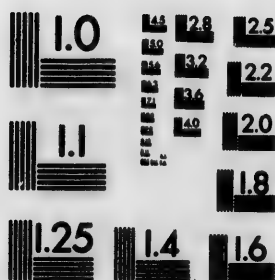


IMAGE EVALUATION TEST TARGET (MT-3)



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ous, and a resort to sleighs would be necessary. If it was intended that the Company might at their discretion keep six inches from accumulating on the track by removing it as it fell, and so keep the track open for their cars by piling it up to any depth on either side, the object or efficacy of the enactment is not apparent, and I do not so read it.

The last addition in my view allows them to remove the snow, even when six inches deep, by using the most improved and effective apparatus obtainable, to be tested and approved of by the Engineer; but if such apparatus, though the best to be had, cannot be used without unreasonably impeding or endangering the other traffic of the street, then I think he may and should withhold his approval. I adopt this construction of provisions which are certainly not clear, upon the principle, which I take to be sound, that the obstruction of the highway and impeding or endangering all other traffic on it can only be justified by clear express permission, which I do not find, and that the privileges of the railway must if possible be exercised without so doing, and without throwing upon the City unreasonable or excessive trouble and expense in keeping the highway clear. It is true it is not said what the Company are to do with the snow when they remove it, but this does not imply permission to obstruct with it the rest of the street to an unreasonable or dangerous extent, and when they cannot use their cars without doing so I think they must take to sleighs.

It is to be remembered that their right to use either the track or that part of the street between the rails is not exclusive, but confined to a preferential right of way for their cars. At other times the general public have equal rights, and these respective rights must be exercised reasonably so as to avoid unnecessary interference with each other.

How far, if this view of the law be correct, they are exceeding their powers is of course a question of fact.

C. ROBINSON.

Toronto, January 23rd, 1888.

(Appendix 39 to Minutes of Council, February 13th 1888.)

Mayor's Message.

MAYOR'S OFFICE,

TORONTO, February 13th, 1888.

Gentlemen of the Council:

Since the last meeting of the Council a petition, which will be presented this evening, has been received by the Clerk from the Toronto Street Railway Company, praying for the repeal of By-law No. 1264, which provides for the placing of conductors on all cars.

I have also received communications (2) from the Solicitor of the Company, asking that counsel be heard in support of the petition.

In view of the fact that the case is still before the Courts, and that counsel for the City thinks that "it might be desirable for this Council not to discuss the

CITY OF TORONTO v. TORONTO STREET RAILWAY CO. 177

petition or hear any argument," I would recommend that the petition be summarily disposed of, and that counsel be not heard on behalf of the Company.

I append herewith the correspondence which has passed through my hands in reference to this matter.

E. F. CLARKE,

Mayor.

ENCLOSURE.

"A."

Toronto, February 6th, 1888.

CITY OF TORONTO v. TORONTO STREET RAILWAY COMPANY.

His Worship the Mayor, Toronto :

DEAR SIR,—This morning an application was made for a postponement of the appeal in this case until such time as the petition which the Street Railway Company say they are going to make to the Council is disposed of. We opposed any further postponement of the appeal, stating that we had instructions to do so and pointing out that the Street Railway Company had had several months in which they could have taken action in the direction they are now taking it. It was, however, no use, the Court of Appeal stating that they thought it was proper that it should stand until this petition had come up before the Council, and as soon as the Council had disposed of it, or any Committee to which the Council might refer it, we might on one day's notice bring the appeal up again before them and have a time fixed for arguing it. This is, therefore, the position of the matter, and if the Council chooses to throw out the petition without referring it to a Committee when it comes up we can then at once get the appeal forced on again for argument; but if the Council referred it to a Committee, we cannot get the case brought on for argument until the petition has been finally dealt with.

Yours truly,

ROBINSON, O'BRIEN, GIBSON & LEFROY.

"B."

Toronto, 10th February, 1888.

E. F. Clarke, Esq., Mayor, Toronto :

DEAR SIR,—I am presenting a petition to the Council on behalf of the Toronto Street Railway Company praying for the repeal of By-law No. 1264. I have arranged with Ald. Drayton to move the reception of the petition. My clients desire to be heard by counsel in support of the prayer of the petition, and I write to ask if that can be arranged. I should be exceedingly obliged by an immediate reply, as the time is very short to retain and instruct counsel.

Your obedient servant,

GEORGE F. SHEPLEY.

"C."

TORONTO, 11th February, 1888.

Re STREET RAILWAY COMPANY'S PETITION.

E. F. Clarke, Esq., Mayor, Toronto:

DEAR SIR,—Can you kindly let me have an answer by bearer to my letter of yesterday? I promised to let Mr. Osler know early this morning, as he has other engagements which he must arrange for if this is to go on.

Your obedient servant,

GEORGE F. SHEPLEY.

"D."

MAYOR'S OFFICE,

TORONTO, February 11th, 1888.

GENTLEMEN,—Find herewith a letter which I received yesterday afternoon from Mr. Shepley, the Solicitor of the Toronto Street Railway Company.

You will note that he desires the permission of the Council to be heard in re his petition for the repeal of the bob-tail car By-law.

Will you kindly advise me in what position the matter stands, that I may communicate with him in reference to it.

Faithfully yours,

E. F. CLARKE,

Messrs. Robinson & O'Brien.

Mayor.

"E."

MAYOR'S OFFICE,

TORONTO, February 11th, 1888.

DEAR SIR,—In reply to your communication of yesterday afternoon and this morning, I beg to say that I shall recommend to the Council that in my opinion it is inadvisable at present to entertain the petition of the Street Railway Company, asking for the repeal of the By-law, re bob-tail cars, or to hear counsel in support of petition.

Faithfully yours,

E. F. CLARKE,

G. F. Shepley, Esq.

Mayor.

"F."

TORONTO, February 13th, 1888.

CITY OF TORONTO VS. STREET RAILWAY COMPANY.

His Worship the Mayor, Toronto:

DEAR SIR,—I am in receipt of your letter of this morning enclosing letters from Mr. Shepley of yesterday and to-day's date in reference to a petition filed by his firm on behalf of the Toronto Street Railway Company for the repeal of the one-

horse car By-law, and his request to have counsel heard on behalf of the Company before the Council. I see no legal objection to the Council listening to any argument that may be adduced in favor of the repeal of the By-law. The time, however, chosen by the Company for this request is peculiar. The case is now before the Court of Appeal, and the argument can come on at any moment as soon as the Council make up their minds in reference to the present petition. The decision of the Chancellor was in favor of the City. The Street Railway Company are now appealing to the Court of Appeal. This appeal will probably, though one can never speak with certainty in such matters, be unsuccessful. The Street Railway Company did not accept the Chancellor's decision but took their legal right of appealing. It may be presumed from the Street Railway Company petitioning at this juncture that they are also of the opinion that the appeal will not be successful. Under the circumstances it might be desirable for the Council not to discuss the petition or hear any argument unless the Street Railway Company first formally abandon their appeal, and consent to an order dismissing the appeal with costs. When that is done the City will be in a proper position to take up and discuss the merits of the By-law. Without suggesting that the appeal from the Chancellor's judgment was merely for the purpose of delaying the enforcement of the By-law, it is manifest that it has had this effect. Taking any other course than the above would, in the event of the present application of the Street Railway Company to the Council being unsuccessful, still leave it in their power to continue litigation and still further delay the enforcement of the By-law.

Yours, truly,

H. O'BRIEN.

CXXXIX.

In Council:—

Ald. McMillan, seconded by Ald. Carlyle (St. Thomas Ward), moves that the prayer of the Toronto Street Railway Company for the repeal of By-law No. 1264, which provides for the placing of conductors on all cars without further prosecution of the pending litigation, be and the same is hereby refused, and further, that this Council also refuses to enter into any discussion of the subject pending the discussion of the Court of Appeal on the appeal from the judgment of His Lordship the Chancellor of Ontario, and that the 33rd and 35th Rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute No. 146, Minutes of Council, February 13th, 1888.)

CXL.

In Council.—

Ald. Ritchie, seconded by Ald. Carlyle (St. Thomas Ward), moves that the City Engineer be instructed to report. * * * * (4) for an extension of the Street Railway service to Bloor street, along Dovercourt Road, before block paving is laid.

(Minute No. 187, Minutes of Council, February 20th, 1888.)

CXLI.

Report of Executive Committee.

Your Committee recommend that the clause of this Report relating to the proposed street car service to Dovercourt be referred back to the Committee on Works in order that the precise route to be taken may be definitely determined and reported to the Council with full information in the premises.

(Appendix 133 to Minutes of Council, February 23rd, 1888.)

Report No. 4 of the Committee on Works.

Your Committee submits, for the information of Council, that a petition has been presented from S. B. Stephenson and 107 others, residents of Dovercourt, asking that the street car tracks be extended from College street, running north to Bloor street; and it is recommended that the Street Railway Company be requested to comply with the prayer of the petitioners.

(Appendix 140, to Minutes of Council, February 23rd, 1888.)

CXLI.

Your Committee begs to recommend the adoption by Council of the following report of the City Engineer in regard to the much needed repairs to many of the streets, which are now in a very bad condition; on condition that the City Solicitor reports that the City's interest will not be prejudiced by the construction of the said roadways in its suit with the Street Railway Company:

"I beg to call the attention of the Committee to the necessity of re-constructing many of the streets occupied by the tracks of the Toronto Street Railway Company. I would recommend that tenders be asked for the construction of granite block pavements covering the 16 feet occupied by the Street Railway Company. The approximate quantity will be somewhat about 28,750 square yards, and the cost \$71,875.00.

The cobble stone pavement recently laid down on the 16 feet of the roadways occupied by the Toronto Street Railway, being approved by the said Company, I would recommend that tenders be asked for the re-construction of certain other portions of roadways occupied by the street car tracks with this class of pavement which is very durable, and about the price of cedar blocks. I need not say anything about the great necessity which exists for re-constructing many of the roadways, as the Committee on Works are all familiar with the deplorable condition of these roadways during the past winter, caused by the raising of the cedar blocks. I hope the Committee will not hesitate to adopt this recommendation."

(Appendix 232 to Minutes of Council, March 16th, 1888.)

CXLI.

Report No. 5 of the Committee on Works.

Your Committee begs to report that it has re-considered the clause of Report No. 4, in re the extension of the street car service on Dovercourt Road, from College

street north to Bloor street, sent back by Executive Committee for the purpose of having the route definitely stated. It is therefore recommended that the Toronto Street Car Company be instructed to extend the McCaul and College street car route along Dovercourt Road northerly from College street to Bloor street, and to operate it as soon as the pavement about to be laid down on the said Dovercourt Road is completed.

(Appendix 238 to Minutes of Council, March 26th, 1888.)

CXLIV.

In Council :—

The Council resolved itself into Committee of the whole on Reports Nos. 8 and 9 of the Executive Committee. Ald. Ritchie in the chair.

The Committee rose. Ald. Ritchie reported that the Committee had adopted Report No. 8 with the following amendments: * * * To the purchase of 10,000 "Scoriae" blocks for street paving purposes be struck out, for the purpose of referring the same back to the Committee on Works for further consideration, and adding at the end of the clause in the same Report having reference to the repairs to certain street roadways upon which street railway tracks are laid, the following: "Provided that the above work be not proceeded with until such time as the Toronto Street Railway Company give an undertaking under the corporate seal of the Company that this Corporation shall not be prejudiced in any rights or claims it has or may have against the Railway Company in respect of the above work or any past repairs," and had adopted Report No. 9 without amendment.

(Minute No. 863, Minutes of Council, March 26th, 1888.)

CXLV.

The following is the judgment of the Court of Appeal on the appeal from the judgment of His Lordship the Chancellor (*ante* p. 111), in the action of *The City v. The Toronto Street Railway Co.*, to enforce the placing of conductors on all street cars :—

APRIL 20TH, 1888.

HAGARTY, C.J.O.—It is not necessary to set out the clauses in the original Agreement, the Statute and the By-law of 1861, and the other documents, as they are fully noticed in the judgment of my brother Patterson.

I am unable to accept the view that under the terms of the Agreement of 1861, the presence of a conductor as well as a driver is required on each car. As I understood the argument before the learned Chancellor, it was in substance that under the clause in the agreement authorizing the making of regulations by the city, the regulation or requirement of this by-law was justifiable. If the right construction of the agreement require a conductor in all cases besides the driver, there is

nothing further to be argued, and the by-law or resolution, whatever it be called, was an unnecessary proceeding. If the decision rest merely on the wording of the agreement, then, I am sorry to say that I have to a great extent misunderstood the substantial argument of the able counsel for the City.

Presented in this shape, we have only to look at the Agreement and the original By-law of 1861, and on the two clauses—one that the Company shall employ careful, sober and civil agents, conductors and drivers to take charge of the cars—and the clause: "The conductors shall announce to the passengers the names of the streets, etc., as the cars reach them."

Do these words necessarily import a specific contract that on every car there must be a conductor as well as a driver. 2nd. Is such a contract so clear and definite that it would be enforced by injunction?

The first clause, as I read it, means that the persons acting as agents, conductors, or drivers, shall be careful, sober, and civil, and the second, that an officer or servant acting as conductor, shall announce the names of the streets.

The learned Chancellor says; "The broad question, which, of course, lies at the root of everything, is the validity of this by-law." Again, "It cannot be said that this by-law dealing with the conductors is one which infringes upon the privileges granted by the resolution. It merely makes distinct that which would be rather a matter of inference in the original agreement. It makes distinct in the changed condition, etc., which arose afterwards when one-horse cars were put on. If the circumstances are such as to give rise to the necessity of exercising the power given by the Statute, the Council can pass rules as they see best; can pass by-laws from time to time, to protect the person and property of the public;" and at the conclusion of his judgment he says, that the action is the *bona fide* action of the City Council upon a by-law which seems to him to be within the power of the Council, passed to give protection to passengers and the public.

The formal judgment of the Court declares that plaintiffs are entitled to specific performance of the Agreement of March, 1861. This formal judgment makes no reference to the by-law, but rests the right upon the original contract.

In this view, apart from the by-law or regulation, a very serious question arises whether the agreement is so definite and precise and clear in its terms that any Court of Equity would interfere by injunction. I speak with due caution in expressing a clear opinion on such a point, but I am bound to say that I do not think such an interference by the strong arm of injunction would be granted. Viewing the case solely as one of contract in 1861, many important questions would be capable of being pressed with far greater force than they would be with the additional introduction of the by-law. I mean the long standing by or apparent acquiescence on the part of the City during the years that elapsed from the first use of the one-horse cars, and the universal knowledge of everyone in the City, that the extensions were being made on the principle of the less costly car system. It may be argued for the City that whenever police regulations become requisite from increase of population or other altered circumstances, no argument should avail as to acquiescence in a line of conduct on the Company's part; but if the

case be rested wholly on the construction of a contract made over twenty-five years ago, it seems to me that the very gravest grounds exist against the exercise of the drastic remedy of injunction or mandamus.

I am of opinion that the plaintiff's right to succeed in this appeal cannot be supported wholly on the basis of the terms of the original agreement.

It may be, of course, properly resorted to to explain and support the by-law of 1882, but I cannot think it is available by itself to support the decree.

We have to consider whether the by-law of 1882, whether it be considered as a by-law or regulation requiring the Company to have on every car a conductor in addition to the driver, is within the power of the City Council to force upon the Company, either under their contract with the Company or under their general corporate powers.

It is beyond all question, on the evidence, that its enforcement must have a most serious effect on the value of the franchises of the Company in forcing on them a very large extra expenditure.

It seems to me to be also very clear, on the evidence, that it was on the urgency of the City Council that about 1878-4, and on the threats of chartering other companies, that the defendants were induced to lay down a series of extensions, and to continue doing so from time to time over routes in the less populous parts of the City, which, unless worked on economical principles, could not prove remunerative—that the one-horse car was well known to be the vehicle to be adopted by the Company over these extensions—that they adopted it, and after it had been in use from year to year, the City again urged further extensions, which, on their urgency and on the known alternative, were made to be worked in the same way; and then, after the lapse of eight years' use, the by-law complained of was passed, to force them to have two instead of one man to manage these one horse cars.

It appears to me that this interference by the City can only be warranted if it fall under the head of a police regulation, such as a municipality in the exercise of its ordinary right to watch over the safety of the people, may exercise. The right to legislate "for the protection of the person and property of the public," is not usually exercised by directing the employment or prescribing the functions of a larger number of servants of a public company, or of a particular manufactory, or in the prosecution of any trade or business.

Such matters as the rate of speed, the carrying of lights at night, the placing of a number, of the owner's name on all vehicles—street cars, the licensing, the width of tires, provisions for the protection of the roadway or track, the taking of certain precautions at crowded spots or crossings, the prevention of the street being obstructed or blocked by unnecessary stoppage or accumulation of street cars; these and all such cognate matters may be conceded as falling generally within the Corporation's general right to make and enforce police regulations.

But as soon as the attempt is made to prescribe the number of horses to be used with each carriage, or the number of servants who must be employed to drive or conduct the same, we are confronted with a very serious question as to jurisdiction over such matters.

The learned Chancellor in resting his view of the case, chiefly on the contract, says, "It is very important to observe that the regulations are such as the City of Toronto may deem necessary. The railway is not to judge, but the City. The Council are to judge as to what is necessary and requisite for the protection of the persons and property of the public."

I feel great difficulty in accepting the proposition in the extensive sense in which it is thus enunciated. If it be sound, it of course places the defendants' Company wholly within the power of the City, and can be used to turn an enterprise fairly remunerative into a positive loss. Under this view the City could, with an equal show of reason, insist on an extra conductor to guard the safety of the passengers and public while the ordinary conductor was employed collecting the fares, thus having three instead of two men employed.

It seems to be conceded in the American cases that the Court has always to consider whether an exercise of municipal authority as to companies, either chartered by the State or authorized by the local authorities, is reasonable.

The judgment of the Supreme Court, U. S. in 1887, (*Railroad Company v. City of Richmond*, 6 Otto, 96 U. S. 527) delivered by the late Chief Justice Waite, discusses the general question. The Court below had finally settled the reasonableness of the City ordinances, the only question for the supreme tribunal was that of jurisdiction. *Frankford v. City of Philadelphia*, 58 Penn. State Rep. 119, shews that a company chartered to carry passengers through a city was not necessarily exempted from liability to municipal regulations, and that a reasonable regulation of the use of a privilege is not a denial of the right, and the right to question its reasonableness is conceded. The general subject and the nature of "police powers" are discussed in 1 *Dillon on Municipal Corporations*, secs. 390 to 407.

I have seen no case in which a general right to interfere in the internal economy of a trading corporation—regulating the numbers of servants they must employ, has been exercised. There is a case in New Jersey, 12 Vroom 127, in which the municipality, having express power given them by the Legislature, were upheld in ordering a Railway Company to place a flagman.

In *Toledo R. W. Co. v. Jacksonville*, 67 Ill. 37, the Municipality directed a flagman to be kept by the railway Company at a particular crossing. The Court held it unreasonable on the evidence at that particular crossing, as it did not require it, but they recognise the right so to direct at a place where the public safety required it—that if they could order it at that place when the Court held it unnecessary, the Company might be compelled to keep a flagman at every road and street crossing on its entire line.

Brooklyn Co. v. City of Brooklyn, 44 S. C. N. Y. 413, is the nearest in its facts. The Court was strongly of opinion that a by-law requiring a conductor as well as a driver on each street car could not be supported. I refer to the reasons assigned, "there is a wide distinction between regulating the use of the public streets and entering into the management of the private business of those who have occasion to use them."

It was said, as to the power given by the charter of the City to regulate common carriers and carriers of passengers: "It would seem to be plain that where the

Legislature had granted power to the Company to run cars in the manner it should deem best, that the City under the power of regulating common carriers of passengers could not provide for the number of the employees on each car or the number of horses it should use.

Barnard, C.J., p. 414, notices that by the existing law, "the construction, maintenance and operation of the road is made subject to all laws of the City for the regulation of horse railroads generally;" and he adds, "I do not think this power sufficient to legalise an ordinance requiring a conductor on the cars as well as a driver."

It is also noticed that under the general municipal law such a by-law must be general in its application, not confined to the one carrier Company.

All this seems to throw the City back to rest wholly on their contract.

I am wholly unable to view this case in the aspect it has presented itself to the Chancellor.

I agree in the opinion of my learned brother Patterson, whose judgment I have had the benefit of perusal, that this by-law or regulation cannot be supported as properly within the contract between the parties, and that if within the power of the City to enact, it must be as in the nature of a police regulation—under the general authority of the Corporation—and it ought generally to be of common application, and not aimed specially at a particular company or a particular manufactory, or a particular carrier of passengers or goods. I am not, however, judging it wholly on any narrow ground. We are often called upon to consider whether a by-law of a municipality is within their chartered powers, or is reasonable in its nature or provisions, that is in general restraint of trade, that it is partial in its operation, not general in its application, granting unfair preference or privilege, etc., etc. See such cases as *Calder Navigation Co. v. Pilling*, 14 M. & W. 86, and cases cited in last edition of our Municipal Manual in notes to secs. 215 and 216.

If I have the right to judge of the reasonableness of this by-law, I do not hesitate to express my opinion as being against it, and as I read the evidence, no case was made out to warrant its enactment.

In *Elwood v. Bullock*, 6 Q. B. 401, Sir J. D. Coleridge says: "Whether a by-law is for the regulation of trade or for purposes of police, it must be reasonable and just." The use of these single horse cars is shewn to have been for years common in the large cities on this continent, and we can hardly suppose that the intelligent members of the municipality did not share the knowledge of their use common to the rest of the world.

Then we find, as already noticed, their introduction and user for so many years before any suggestion of interference by the City. All this calls for a very strict construction of the right of interference.

The bulk of the evidence as to the existence of a danger to the public, calling for this interference, appears to me to be wholly a matter of opinion, on which the whole adult population of Toronto might be asked to express his or her views.

The evidence of fact seems to me to fall short of proving any case against these cars of any general danger to the public, peculiar to them, and not common to every vehicle or conveyance in which one person only has to attend to his horse as well as to goods or passengers received, carried, or delivered by him.

In theory it may be considered that in all cases whether of cabs, omnibuses, loaded waggons, or street cars, the employment of an extra person specially to look after and guard against accidents to passengers or the public, may afford additional protection. We have to deal, however, with realities, not theories, and with the well understood conditions on which the business of life is carried on.

I am of opinion no case was made out for the interference of the Court, and that the appeal must be allowed, and the action dismissed.

BURTON, J. A.—I quite agree with the learned Chancellor that the clauses of the agreement of the 26th March, 1861, are to be read as constituting not only the contract between the parties, but also as defining the powers which are entrusted by the Legislature to the City Council, and we are relieved from the difficulty of considering the validity of the by-law *qua* by-law or legislation, inasmuch as the defendants waive any question of that kind and are willing to treat it as a regulation, and the question therefore is reduced to whether this is a regulation which the Council are empowered to make under the agreement.

At the time that agreement was made, there was no legislative authority existing for laying down a street railway within the limits of the City, and the agreement therefore provided that application should be made to the legislature, and as soon as the legislative authority was obtained the plaintiffs should pass a by-law to make it effectual.

Accordingly in the session of 1861, the Toronto Street Railway Company were incorporated, and the agreement in question was validated, and the Corporation of the City of Toronto authorized to pass any by-law or by-laws for the purpose of carrying it into effect.

The Act gave full power to construct and operate their railway upon or along any of the streets of Toronto, on first obtaining the consent of the Corporation.

That consent had been previously obtained, as to certain streets therein referred to, under the agreement in question, embodying a number of resolutions of the Council, prescribing the conditions on which the road was to be constructed and operated, in which after setting forth those conditions also set forth the covenants binding on the Railway Company among which is the following:

"That the said party of the second part, his heirs, executors or administrators, shall and will at all times employ careful, sober, and civic agents, conductors and drivers, to take charge of the cars upon the said railways, and that he the said party of the second part, his heirs, executors and administrators, and his and their agents, conductors, drivers and servants, shall and will from time to time, and at all times during the continuance of this grant, and the exercise by him and them of the rights and privileges hereby conferred, operate the said railway, and cause the same to be worked *under such regulations as the Common Council of the City of Toronto may deem necessary and requisite for the protection of the persons and property of the public, and provided such regulations shall not infringe upon the privilege granted by the said resolutions.*"

After the passing of the Act of Parliament, the corporation passed a by-law ratifying the agreement, and authorized the company to proceed with the work under the conditions, provisos and restrictions, in the resolutions and agreement contained, and such other regulations as were therein set forth, or might from time to time be deemed necessary for the protection of the citizens of Toronto.

The agreement provided that the road should not be operated until a certificate was obtained from an officer of the Council, and the by-law contains the clause: "That before the certificate hereinbefore referred to shall be granted, the said Alexander Ewton shall submit to the Council of the Corporation of the City of Toronto for their approval, the rules and regulations for the government and guidance of the conductors and drivers upon the said railways, and others connected with the working thereof, which said rules and regulations when approved by the said Council, shall be posted in some conspicuous place in each car; no carriage shall be run upon any of the said railways without a copy of said rules and regulations being placed therein."

This was done, and these rules and regulations were approved and sanctioned by the Council and are still in force.

As I understand the agreement, the rules and regulations of the Company, and which they alone were entitled to make, were to be of no force or effect until sanctioned by the Council, and it may be, (I do not say it is so,) but it may be that any new regulation might require to be sanctioned in like manner, but I do not understand that the City can impose regulations of their own upon the Company in reference to the management of their cars, or other purely domestic arrangements or corporate business of the Company entrusted by law to the railway corporation itself, and with great deference I think this is a regulation of that nature.

I do not agree with the learned Chancellor in the construction placed by him on the 6th paragraph of the agreement, that it imposed upon the defendants the duty necessarily of having two persons to perform the duties of driver and conductor; pushed to its logical conclusion that argument would not restrict the duty to employ two persons only, but would require three or even more persons to be employed on each car, for it applies to agents, conductors, drivers and servants. I am satisfied that all that is required under that paragraph is that the Company shall employ careful, sober and civil servants.

No doubt with the double-horse cars a conductor was necessary, and although I do not agree with the counsel for the defendants as to the construction of paragraph 7 of the agreement, that the Company were under any obligation to furnish cars from time to time of the most modern style, there is nothing in the agreement to prevent them doing so.

The paragraph, however, has only reference to the cars that were to be put on the road at the opening, and before applying for the certificate referred to in the next section.

No doubt, when applying to the Council for their consent to lay down rails on other streets than those to which the original consent extended, the Council might prescribe the conditions on which the permission should be granted.

The defendants are of course liable to any person injured by the negligence of their servants, whether that person be a passenger, or one of the public not using the railway; and I take it for granted that the Council under its ordinary powers could pass such reasonable regulations for the protection of the public, which I may designate or distinguish as police regulations, as are not inconsistent with or in derogation of the privileges granted under the agreement and Act of Parliament, but their police powers regulating the general use of the streets and the safety of the public generally are to this extent restricted, that they must not infringe upon the privileges granted by the charter, and resolutions.

But in my view this is a pure matter of internal management which cannot originate with the Council, and that there is nothing in the regulations originally sanctioned by the Council to prevent their operating the road by the use of the one-horse cars in the manner they are doing.

I think, therefore, that the appeal should be allowed, and the action dismissed with costs.

PATTERSON, J.A.—The order from which the defendants appeal is, that they, their officers, servants, workmen and agents be restrained from using or operating cars upon their lines of railway in the City of Toronto, or any part thereof, without having a conductor as well as a driver upon each and every of the said cars and vehicles, the Court further declaring that the plaintiffs are entitled to specific performance of the agreement entered into by them, on March 26th, 1861, in the pleadings mentioned, in this respect.

The agreement was between the City and Alexander Easton. It recited certain resolutions passed by the Common Council on the 14th of March, 1861, by way of acceptance of a proposal of Easton to construct and operate street railways on some of the streets of the City. There were twenty-four resolutions. No. 7 prescribed the kind of rail to be used, and declared that the cars were to be constructed in the most modern style; and No. 8 provided that each car employed on the railway should be numbered, and that none should be used except under a license for that purpose, for which license the proprietor should pay the annual sum of five dollars. The City, in consideration of the amounts to be paid by Easton, his executors, administrators, or assigns, by and under the resolutions and those presents, and of the covenants and agreements therein on his part to be kept and performed, gave and granted to Easton, his executors, administrators, and assigns, the exclusive right and privilege to construct, maintain, and operate street railways by single or double tracks in, along, and upon King street, Queen street, and Yonge street, for thirty years, upon the conditions, and subject to all the payments, regulations, and stipulations in the resolutions and those presents expressed and contained. Then followed some covenants by the City, amongst which was a covenant to pass a by-law framed in accordance with the resolutions as soon as legislative power to do so was obtained. Easton also entered into covenants numbered from one to seven.

Nos. 1, 2, and 6 may be especially noticed.

(1) "That he will construct, maintains and operate the said railways within the times, in the manner, and upon the conditions in the said resolutions and these presents set forth.

(2) "That he will well and truly pay the said license fees, and will truly and faithfully perform, fulfill, and keep all the conditions, covenants, and agreements in the said resolutions, and these presents expressed and contained on his and their part to be performed, fulfilled, and kept.

(6) "That the said party of the second part, his heirs, executors, or administrators, shall and will at all times employ careful, sober, and civil agents, conductors, and drivers, to take charge of the cars upon the said railways, and that he, the said party of the second part, his heirs, executors, and administrators, and his and their agents, conductors, drivers and servants, shall and will from time to time, and at all times during the continuance of this grant, and the exercise by him and them of the rights and privileges hereby conferred, operate the said railway, and cause the same to be worked under such regulations as the common Council of the City of Toronto may deem necessary and requisite for the protection of the persons and property of the public, and provided such regulations shall not infringe upon the privilege granted by the said resolution.

The Act of 24 Vic. cap. 83, passed on the 18th of May, 1861, incorporated the Toronto Street Railway Company.

That is not the Company which is defendant in this action. The enterprise which it inaugurated passed through vicissitudes which led to the franchise and property becoming vested in individual purchasers, who obtained in 1873 a new Act of incorporation, 36 Vict. cap. 101. The old name was transferred to the new Company, and it became subject to the provisions of the former Act, and to the obligations contracted under it so fully that we may discuss the Act as if it had always applied to the defendant Company, and may, for all present purposes, treat the defendants as the Company incorporated in 1861.

The Company was empowered by section 6 to use and occupy such parts of the streets and highways of the City of Toronto, and of the Municipalities immediately adjoining the limits of the City as should be required for laying rails, etc., "Provided always that the consent of the said City and Municipalities respectively shall be first had and obtained, who are hereby respectively authorized to grant permission to the said Company to construct their railway aforesaid with their respective limits, across and along, and to use and occupy the said streets or highways or any part of them for that purpose, upon such conditions and for such period or periods as may be respectively agreed upon between the Company and the said City or other Municipalities aforesaid, or any of them."

By section 14, the City and the adjoining Municipalities, or any of them, and the Company are respectively authorized to make and enter into any agreement or covenants relating to various specified matters, including the time and speed of running of the cars, the amount of license to be paid by the Company annually, the amount of fares to be paid by passengers, and generally for the safety and convenience of passengers, the conduct of the agents and servants of the Company, and the non-obstructing or impeding of the ordinary traffic. And by section 15 the City and the municipalities were authorized to pass by-laws for the purpose of carrying into effect any such agreements or covenants, and containing all necessary clauses, provisions, rules, and regulations for the conduct of all parties concerned and for the enjoining obedience thereto, and also for facilitating the

running of the cars, and for regulating the traffic and conduct of all persons travelling upon the streets and highways through which the railway should have been laid.

The 16th section declared the agreement of the 22nd of March valid and binding, and authorized the City to pass a by-law or by-laws to carry it into effect.

By-law 353 was accordingly passed in July, 1861. The only clauses of it which require notice are the first three, which read thus :

"1. That the said agreement hereinbefore recited shall be, and the same is hereby ratified and confirmed—and the said Alexander Easton is hereby authorized to lay down street railways on King street, Queen street, and Yonge street, and work the same under the conditions, provisions, and restrictions in the said resolutions and agreement contained, and such other regulations as are herein set forth, or may from time to time be deemed necessary by said Council for the protection of the citizens of the said City of Toronto.

"2: That so soon as the said railways or any of them are constructed and certified to in the manner, and according to the terms of the said agreement, the said Alexander Easton may commence to run cars or carriages, and convey passengers thereon, and collect the fare for the same as settled by the said resolution and agreement, and fully operate the said roads.

"3. That before the certificate hereinbefore referred to shall be granted, the said Alexander Easton shall submit to the Council of the Corporation of the City of Toronto for their approval, the rules and regulations for the Government and guidance of the conductors and drivers upon the said railways, and others connected with the working thereof, which said rules and regulations when approved by the said Council, shall be posted in some conspicuous place in each car or carriage, and no car or carriage shall be run upon any of the said railways without a copy of said rules and regulations being placed therein."

The injunction is to enforce By-law No. 1264, which was passed on the 18th of December, 1882, and which required that "every street railway car in use on the several lines of Street Railway in the City of Toronto shall be provided and furnished not only with a driver, but also with a conductor, who shall discharge his duties as such conductor in the manner provided by By-law No. 353," etc.

It is not clear what this last direction is meant to refer to, or how it aids the object recited as the motive for passing By-law No. 1264, which is to make further provision for the protection of the citizens of Toronto, and prevent accidents resulting from the use of street railway cars without conductors.

One of the resolutions of the 14th of March, 1886, was that the conductor shall announce to the passengers the names of the streets and public squares as the cars reach them. The resolutions are recited in the agreement of the 22nd of March, and that again in By-law No. 353; but that by-law does not in any other way provide for the manner in which the conductor shall discharge his duties, except by the general stipulation that all agents, conductors and drivers are to be careful, sober and civil.

This may be of little direct importance.

This great question must be, the power of the City Council to impose upon the Company the restrictions contained in By-law 1264.

I do not rest at all on the deliverance being cast in the form of a by-law. The objections at one time urged on that score are not insisted on. We are to take it as an expression of the will of the Council without necessary regard to the technical form in which it is declared. This is no doubt the proper way to treat the document for the purpose of the present inquiry.

The first question is, the construction of the instruments of 1861, on the combined effect of which primarily depends what may be called the legislative jurisdiction of the Council. These are the resolutions, the agreement, the statute, and the By-law 353. This legislative jurisdiction is not necessarily conclusive as to the power or the right to insist on the terms of By-law 1264, but it of course lies at the root of the inquiry.

I do not think anything can turn on the stipulation in Article 6 of the agreement that the Company—or Easton, whose place the Company fills—"shall at all times employ careful, sober, and civil agents, conductors and drivers to take charge of the cars upon the railways," as in any sense implying an obligation to have a conductor on each car. No one attempts to argue that three men, agent, conductor, and driver, were to be employed, nor has it been suggested that the Company required to be bound by contract to have a driver. The draftsman would not be more likely to stipulate for the employment of a conductor than a driver, because one would seem to him as much of course as the other, the one-horse car not then having been invented, and the only cars in use being the large car which carried the two men. His aim evidently was, to omit nobody from his stipulation for carefulness, sobriety, and civility, therefore he inserted the comprehensive word "agents." Instead of "agents, conductors and drivers," he might as well have used the term "agents and servants," which we find in the 14th section of the statute, under which alone, as I am about to show, there was power to make any agreement or regulation for the working of any of the one-horse lines in the City.

The meaning, as I understand it, is no more than that the men employed are to be careful, sober, and civil men, and it is not to provide that any number of men shall be employed. I think that is very plainly expressed, and I think it was understood by the City Council just as I understand it.

I account in that way for the fact that one-horse cars were introduced and were run for so many years without objection, and for the movement in the Council against them taking the form of a by-law to make further provision, etc., and not of an action to enforce an existing agreement to employ conductors on all the cars. The by-law recites that it is expedient to make further provision for the protection of the citizens of Toronto. This language is, that of the first clause of by-law 353, which authorized Easton to work the railway on King street, Queen street, and Yonge street under the conditions, provisions, and restrictions in the resolutions of the 14th and the agreement of the 22nd of March, 1861, contained, "and such other regulations as are herein set forth, or may from time to time be deemed necessary by said Council for the protection of the citizens of Toronto." We find the same language in the first resolution of the 14th of March, which

authorizes the working of the railways "under such regulations as may be necessary for the protection of the citizens," and in the sixth article of Easton's agreement, where some qualifying words are added by way of proviso, which were, perhaps, not essentially necessary.

Easton then agreed that "he, his heirs, etc., and his and their agents, conductors, drivers and servants, would from time to time, and at all times during the continuance of that grant, and the exercise by him and them of the rights and privileges thereby conferred, operate the said railway and cause the same to be worked under such regulations as the Common Council of the City of Toronto may deem requisite for the protection of the persons and property of the public, and provided such regulations shall not infringe upon the privilege granted by the said resolutions."

The qualification thus expressed would most likely have been implied. It is, in effect, a declaration that the contract between the two contracting parties was not to be varied by the separate act of one of them.

It is important to observe that the rights and privileges conferred by that agreement were in respect only of lines of railway on Queen and Yonge streets, and on that part of King street between the Don and Bathurst street.

Rights were afterwards given in respect of other lines; but, if the original agreement applies to them, it is not by its own force, but by the effect of some other agreement into which it may have been, in whole or in part, incorporated.

The terms on which it was extended to some other lines may be learned from a paragraph which I shall read from the statement of claim.

"12. By a certain agreement, under seal, bearing date the 29th day of July, 1881, and made between the plaintiffs of the first part and the defendants of the second part, after reciting that the plaintiffs' counsel had authorized the construction of certain new lines of street railway in the City of Toronto, and also the extension of certain existing lines along certain other streets upon the terms and conditions set forth in the by-law above referred to, being By-law Number 258, and in the several statutes relating to the Toronto Street Railway Company, except in so far as modified by the said agreement, the defendants, for themselves and their successors, covenanted, promised and agreed with the plaintiffs, and their successors, to build, construct and operate the several lines and extensions of lines in the said agreement more particularly set out and subject to the conditions and terms of the said By-law Number 258, and the several statutes of Canada and Province of Ontario relating to the Toronto Street Railway Company and also subject, amongst others, to the following conditions, that the said lines and extensions of lines should be built in the following order: Church street, Strachan avenue and Exhibition road, Dundas street from Queen street to Dufferin street, Queen street from Yonge street eastward to King street, Spadina avenue from College street to Bloor street, and Bathurst street from King street to Bloor street. And it was further agreed and understood by and between the plaintiffs and the defendants, in and by the said agreement, that nothing therein contained should operate to prejudice, interfere with, derogate from, or in any wise modify, except as therein expressly provided, the rights and liabilities of the parties under the agreement, by-law, and statutes theretofore enforced; regulating

the relations of the parties thereto, and that the lines of railway tracks to be laid by the defendants under that agreement should, when built, be considered as coming to all intents and for all purposes within the operation of the said former agreements, by-laws and statutes, except as therein otherwise expressly provided."

This agreement of 1881 does not embrace all the new lines. There are five or six others, besides extensions of the Queen and Yonge street lines.

When we are asked to apply the term of the first agreement to any line but the original lines, we must remember that it can apply only as a new agreement made at the later date under the powers given by the 14th section of the statute; and can only apply by virtue of its adoption by some other substantive agreement like that of 1881; and that the privileges granted in respect of new lines, and which are not to be infringed under color of regulations made by the Council, are those granted by the new agreements, and are not necessarily the same as those conferred in respect of the original lines.

Before further discussing that subject, I propose to consider whether the regulation embodied in by-law 1264 is one of those which were to be within the legislative jurisdiction of the Council.

What is the force of the thrice repeated expression, "the protection of the citizens;" "the protection of the persons and property of the public;" "the protection of the citizens of Toronto?"

I accede to the argument, on behalf of the Company, that the general public using the streets through which the lines of railway run, and not the passengers carried by the cars of the Company, are here intended.

This is not because I regard the expression "the public" as altogether inappropriate to denote or to include the persons who use a public conveyance. I find it employed in that sense in the 14th resolution, which requires that, when the track is impeded by snow, sleighs shall be provided for the accommodation of the public. The context there explains what is meant. But here we have "citizens" used as an equivalent term; we have the fact that the power is reserved by the City in connection with the grant of a right to encroach upon the public easement; we have no allusion in terms to the protection or convenience of passengers; and we have the reference to the protection of property, while resolution 13 provides that the cars shall be used exclusively for the conveyance of passengers.

The qualification appended in the agreement aids this construction, because the privilege that is not to be infringed by the regulations is the right to use the streets.

The statute also has an important bearing.

The power given to municipalities by section 14, to take part in arrangements for the safety and convenience of passengers, the conduct of the agents and servants of the Company, and the non-obstruction or impeding of the ordinary traffic, is only by agreements made between the municipalities and the Company, and not by any Legislative Act of the Municipal Council.

There is to be joint action to guard the ordinary traffic from being impeded by the railway; and under section 15 the municipalities alone are empowered to save the railway from being obstructed by the ordinary traffic.

The statute does not vary the agreement, but it supplements it by the provisions of section 14.

The agreement would, I apprehend, have to be interpreted consistently with the statute if there was ambiguity in its terms, and could even be construed to give powers at variance with those conferred or recognised by the statute. There is no conflict; but it must not be forgotten that the confirmation of the agreement by the statute did not extend it to any lines but those to which it always applied. The only power to make agreements respecting new lines, was the power expressed in the statute, and that power could not be exceeded by assuming to place the new lines under the original agreement.

The details mentioned in section 14, all of which I have not spoken of, deserve to be further noticed. They seem to me decisive against the power of the Municipal Corporation to control any of the operations of the Company, except under a joint agreement. These details include the construction of the railway, its location upon the streets, the pattern of rail, the time and speed of running of the cars, the amount of license to be paid, the amount of fares to be paid by passengers, the time within which the works are to be commenced, the manner of proceeding with the same and the time for completion, besides the general heads of the safety and convenience of passengers, the conduct of the agents and servants of the Company, and the non-obstructing or impeding of the ordinary traffic. They also include several things which are not, as a rule, undertakings of the Company, but which are calculated to interfere with its operations, viz: the paving, macadamising, repairing and grading of the streets, the construction, opening and repairing of drains and sewers, and the laying of gas and water pipes. These details were not overlooked in the arrangement of 1861, nor were the general heads of the safety and convenience of passengers, the conduct of agents and servants, and the ordinary traffic, but they were dealt with as matters of agreement, not of unilateral regulation.

The regulation promulgated by By-law 1264 is, in my view of the power of the Council, wholly unauthorized, even assuming what is not proved, that all the new roads are governed by the terms of the original agreement.

It is a direction to the Company as to the mode in which it is to conduct its business, a matter which, if the Council can meddle with at all, must be the subject of a joint agreement.

The claim on the part of the City goes almost the length of asserting an absolute discretion in the Council to attach new obligations and new restrictions to the conduct of the business of the Company, by declaring them to be necessary for the protection of the citizens.

The liability of such a power to abuse and to be used oppressively proves the wisdom as well as the importance of the limitations which I deduce from section 14 of the statute.

The limitation is, in my opinion, twofold. First, as to the subject matter, which is the protection of the general public and not the safety and convenience of pas-

sengers; and secondly, the nature of the regulations, subject to which the Company is to "operate the railway and cause the same to be worked." These are not, as I read the provisions, to require the Company to do anything in the way of construction, or in the working of its cars or fulfilling its duties to its passengers; but only to submit to what the Council may think it necessary to do, such perhaps as closing a gate across the track when there is danger, or to obey such directions as to come to a stop at certain crossings, or to hang a bell to every horse's harness.

This construction is, moreover, entirely consistent with what one would naturally suppose to have been in the minds of the contracting parties. The details affecting every department of the enterprise having been arranged by the mutual agreement of Easton and the Council, and carefully set down in the deed, it would be a surprise to find that one of the parties to the contract had been intentionally invested with power to impose at discretion new terms looking to the interest of the party framing them, for the public and the Council are one party in the matter, and which may be unreasonable, onerous, or unfair towards the other.

A large proportion of the evidence given for the plaintiffs was for the purpose of shewing the propriety of the regulation.

It did not bear on the motives of the Council in passing the by-law more directly than as a basis for a claim of a *posteriori* reasoning; what was arrived at was, I think, rather to convince the Court that the regulation was not unreasonable.

There would be no object, in the view I take of the regulation itself, in entering upon an examination of the evidence in detail.

The greater part of it was addressed to the subject of the safety and convenience of passengers, and quite as much to the convenience as the safety.

Witnesses gave their ideas of what passengers would gain if there was always an attentive conductor at hand to render such services as reaching out his hand to keep them from stumbling as they walk up the car, or to assist, as they get on or off, the very old and the very young, the feeble of any age, and the lady encumbered with parcels. The opinions given are now and then illustrated by the narration of incidents from the observation of the witness. These are, with some objections, of a nature inseparable from this kind of travelling, and familiar to the experience of people who ride in two-horse cars with a conductor as well as of those who use the one-horse vehicle.

I do not in the least doubt the sincerity of the witnesses or the goodness of their motives, yet the evidence on this particular topic seems to me, on the whole, of so fanciful and impulsive, not to say sentimental a character, that although made to do service for presentation to the Court, I can hardly imagine a body of business men, whether the directors of a company or civic functionaries, seriously considering it as a basis for practical action in the conduct of a commercial enterprise. The protection of the general public, though not so prominent a topic as the alleged grievances of the passengers, is not overlooked in the examination of the witnesses. The danger suggested is, that people may be run over when the driver's attention is given to the inside of the car. It is shewn that on six or seven occasions, three of them being since the passage of the by-law, coroners' juries have recommended that every car shall have a conductor as well as a driver, but what range of enquiry led to these suggestions is not shewn.

A record of accidents is kept by the Company, and it happens to shew that more than a fair proportion are chargeable to the two-horse cars, the inference from which fact is not weakened by Mr. Lefroy's suggestion that drivers of one-horse have inducements not to report every accident, unless we assume without any evidence that there have been accidents which have not been reported.

Evidence is given on the part of the defendants, apparently of great weight, that for reasons which the witnesses explain, the one-horse car is attended with less danger than the larger and heavier vehicle, though the one has a conductor and the other has only one man to do all the duty. After reading it all, I have no idea that upon the question of the comparative danger to persons in ordinary use of the street, from one kind of car or the other, it could be reasonably held that the one-horse car was the greater source of danger; while I take the proposition, which was so much laboured, to be self-evident, namely, that accidents will be more likely to be averted by the vigilance of two men than one.

All this goes, however, only to the reasonableness of the regulations, if its reasonableness can be enquired into, in case the Council had power to impose it.

We are not concerned with the question, whether it was passed, as one alderman tell us it was, under pressure from the Knights of Labour, or from an intelligent apprehension of its necessity, provided the Council had the absolute power which is claimed, but which in my opinion they do not possess.

There is another important aspect of the case.

The one-horse car is shewn to have first come into use some years after 1861, and to have been very generally adopted in the cities of the United States and Canada. Persons competent to speak on the subject, describe its advantages as well as the extent to which in New York, Philadelphia and other cities, it almost monopolises the traffic, not in outlying or thinly populated districts, but in the most crowded thoroughfares. They inform us that the most invariable practice, in the ordinary use of the car, is to employ but one man whether he is called driver or conductor; that what is now insisted on by the City Council of Toronto is unknown elsewhere; and that no physical impossibility stands in the way, and the form of the one-horse car in use here, which is not a bob-tailed car, would afford accommodation for a conductor, yet on commercial grounds it is out of the question.

The fair result of their evidence, which is not met by any contradiction, is that if these cars are to be used at a profit and not at a loss, they must be worked by one man and not by two.

It is further made clear by evidence which is not rebutted, that the only feasible way of opening up the new routes in the City as they were pressed for by the citizens, and urged on the Company by the Council, and the only way ever contemplated was by means of these one-horse cars. These routes were not opened up simultaneously, but one would be opened and run by the one-horse car, and application made to the Council for another which would be run in the same way. The King street line, which is usually run with single horse cars, was not opened until 1874. Part of it had been authorized in 1861, and part as late as 1874.

Each car, as procured, was numbered according to agreement, and the license fee paid every year, the number licensed rising from 28 in 1878 to 125 in 1887 and 140 in 1888.

The stipulation that the cars should be constructed in the most modern style applied to the King street line, and to every other line to which the terms of By-law No. 353 were made applicable.

A list, which is in evidence, shows the purchases of one-horse cars from 1874 when they were first introduced, to 1885, seventy-three within that time.

I think the proper construction of the dealings between the Council and the Company is, that to employ the one-horse car never was in violation of any agreement expressed or understood. On the contrary, I am inclined to think, though I do not look on it as free from all doubt, that the City might have availed itself of the improvement effected by the invention of that style of car, and insisted on its adoption by the Company whenever new cars were required.

I further think that each agreement or permission for the construction of a new line of railway, must be taken to have been made in contemplation of the mode of operation actually in use, nothing to the contrary appearing.

It was in effect a grant of the right to work the line in that manner; and By-law 1264, even assuming jurisdiction in other respects, is an infringement of the privileges so granted.

I am of opinion that we should allow the appeal with costs, and dismiss the action with costs.

OALLEN, J. A., dissented.

Appeal allowed with costs; and action dismissed with costs.

CXLVI.

In Council:—

The following communication was read:

From Messrs. Robinson, O'Brien, Gibson & Lefroy, Solicitors, informing the Council that the Court of Appeal had given judgment in the case of "The City of Toronto v. The Street Railway Company," to the effect that the By-law requiring the placing of conductors on all street cars could not be sustained.

(Minute No. 452, Minutes of Council, April 23rd, 1888.)

CXLVII.

In Council:—

The following communication was read:

From Mr. Henry O'Brien, solicitor, on behalf of the City, stating that the appeal of the Toronto Street Railway Company, in relation to placing conductors on one-horse cars, had been allowed with costs, and asking the Council to decide whether they will proceed with an appeal to the Supreme Court.

Ald. McMillan, seconded by Ald. Gillespie, moves that no further action be taken by the Council in regard to the proposed appeal from the judgment of the Court

of Appeal in the matter of compelling the Toronto Street Railway Company to place conductors on one-horse cars, upon which the yeas and nays were taken as follows :

YEAS—Messrs. Baxter, Bell, Boustead, Carlyle (St. Thomas Ward), Frankland, Gibbs, Hallam, Hewitt, Hill, Jones, Macdonald, Maughan, McDougall, McMillan, Pells, Piper, Ritchie, Roaf, Shaw, Swait and Verral—21

NAYS—Messrs. Carlyle (St. Andrews Ward), and Fleming—2.

(Minutes Nos. 505, 506, Minutes of Council, April 30th, 1888.)

CXLVIII.

Report No. 8 of the Committee on Works.

Your Committee begs to recommend that the Toronto Street Railway Company be requested to lay down a double line of tracks on College street, west of Dovercourt Road, as already recommended by the City Engineer and adopted by the Council, now that the street is about to be cedar block paved.

(Appendix 410, to Minutes of Council, May 4th, 1888.)

CXLIX.

In Council :—

His Worship the Mayor read to the Council a communication calling attention to the unsatisfactory condition of affairs between the City and the Street Railway Company in reference to the repairing of streets traversed by the lines of the Street Railway Company.

(Minute of Council, July 3rd, 1888, Minute No. 814.)

MAYOR'S MESSAGE.

Gentlemen of the Council :

I desire to call your attention to the extremely unsatisfactory position of affairs between the City of Toronto and the Toronto Street Railway Company in reference to the repair of streets traversed by the lines of the Street Railway Company.

You will, doubtless, remember that in March last the City Engineer recommended that in view of the necessity for the immediate renewal of the roadway upon many of these streets, tenders be asked for 28,750 square yards of granite blocks, or "setts," to be laid down on the Street Railway's portion of certain streets, and that other portions be laid with cobble stone pavement, this having been tried and found to be very satisfactory.

The Committee on Works adopted this recommendation, provided the City Solicitor should be of opinion that the City would not be prejudiced thereby in its

pending action against the Street Railway Company for the costs of certain repairs executed by the City, prior to October, 1886, on those portions of streets which, under their charter, the Street Railway are bound to keep in repair.

The Council adopted the Report of the Works Committee with a further proviso, viz :—

" That the above work be not proceeded with unless and until the Toronto Street Railway Company shall have given an undertaking under their corporate seal that the City shall not be prejudiced in any rights or claims it now has, or may have against the Railway Company by reason of the above work, or [by reason of] any past repairs."

Immediately after the adoption of this Report a series of conferences was held between the representatives of the Railway Company and the sub-Committee of the Board of Works having charge of this matter ; but after some delay the representatives of the Street Railway positively declined to give the undertaking asked, and insisted upon all their legal rights. The City Solicitor upon being consulted, gave it as his opinion that failing some arrangement with the Company the City could only compel the Company to pay for repairs provided in making such repairs, " the same material and mode of construction " was used on the Street Railway's portion as upon the rest of the street.

Thereupon the Committee on Works (by Report No. 10) made the following recommendation, which was concurred in by the Council on the 4th of June :

" Your sub-Committee regret to state that it has been found impossible to make any satisfactory arrangement with the Toronto Street Railway Company : who insist that all matters of difference between the parties, including their demands for—(1) The price of material alleged to have been taken by the City at various times ; (2) The adjustment of matters with respect to past and future payments on debenture account ; (3) Damages in respect of injury alleged to have been caused by delay and mismanagement in the construction of sewers, and (probably), (4) Claims for damages alleged to have been sustained by riots during the strike two years ago—shall all be arbitrated upon at the same time.

" It seems to your sub-Committee that such an arbitration would be of almost interminable length ; and in view of the fact that the franchise of the Company will expire in March, 1891, your Committee cannot but think that the practical effect of the reference proposed would be to postpone a final settlement of the present difficulties to that date.

" Your sub-Committee therefore recommend that the Committee on Works should ask permission from the Council, to instruct the City Engineer to repair the streets occupied by the Railway Company, *using the same material and mode of construction as at present*, except at street intersections, which should be constructed in any manner that the City Engineer may determine.

" Your Committee also recommend that the City Solicitor be instructed to appeal from Judge Rose's judgment ; retaining the services of Christopher Robinson, Esq., Q.C., who argued the case in the first instance, and employing any other Counsel he may think advisable."

A few days afterwards I received the following letter from the City Solicitor :

CITY OF TORONTO V. TORONTO STREET RAILWAY.

CITY SOLICITOR'S OFFICE,

TORONTO, June 12th, 1888.

Private and Confidential.

MY DEAR MR. MAYOR,—Referring to our conversation yesterday, I beg to say that the situation at present is briefly as follows :

1. By the original agreement between Alexander Easton and the City of Toronto, dated March the 6th, 1861, it was provided that "(8) The roadway between and within at least one foot six inches from and outside of each rail shall be paved or macadamized and be kept constantly in good repair by the said Easton ;" and (17) "Should Easton neglect to keep the roadway between and on each side of the rails in good condition, or to have the necessary repairs made thereon, the City Surveyor or other proper officer shall give notice thereof requiring such repairs to be made forthwith, and if not made within a reasonable time, the said Surveyor or other officer shall cause the repairs to be made, and the amount so expended may be recovered against the said Easton in any Court of competent jurisdiction." In May, 1861, Easton and others were incorporated by 24 Vic. chap. 83, under the name of "The Toronto Street Railway Company," and the agreement of March 26th was confirmed. In 1869 the Honorable William Cayley was authorized by 32 Vic. chap. 81, to sell the railway and the franchise previously granted to Easton under mortgage, and upon such sale William T. Kiely became the owner thereof. In 1873, by 36 Vic. chap. 101, W. T. Kiely, George W. Kiely and others, were incorporated under the name of "The Toronto Street Railway Company," and were to enjoy the said franchise and hold the said property under the provisions of the original agreement of 26th March, 1861. In 1876 the terms of the original agreement were first varied by 39 Vic. chap. 63, which provided that, "in repairing the roadway between their rails, and for one foot six inches on the outside of each rail, the Toronto Street Railway Company should use for such repairs the same materials and mode of construction as that from time to time in use by the City Corporation for the remainder of the street," and that "if the Railway Company should neglect to keep the track or roadway and the space of one foot six inches on the outside of the rails in good condition, or to have the necessary repairs made thereon, the City Engineer should give written notice requiring the said repairs to be made forthwith, and unless such repairs were commenced within five days, and carried on with reasonable despatch to the satisfaction of the City Engineer, he might cause such repairs to be done at the expense of the City, and the amount so expended should be recoverable against the Company."

In 1877 further provision was made by the Act 40 Vic. chap. 85, as follows :

"In case the Corporation of the said City shall determine to construct or renew the paving or macadam on any street traversed by the said Railway, the said Company shall be bound within one month after the receipt of notice in writing, requiring them to do so (in which notice shall be specified the nature of the material or kind of pavement intended to be used, the street on which it is to be used, and the time when the work is to be commenced), to construct or renew, subject to the provisions of this Act, the paving or macadam on the roadway, and for one foot and six inches outside of each rail, using the same material and mode of con-

struction as that used for the remaining portions of the street by the Corporation of said City, and to carry on the work of construction or renewal with all reasonable despatch to the satisfaction of the City Engineer of the said City of Toronto; and in the event of the said Company failing to do so, the said Engineer may cause such work to be done at the expense of the said City, and of the amount so expended, an amount not exceeding the sum of two dollars and fifty cents per square yard, shall be recoverable against the said Company in any Court of competent jurisdiction, or by assessment, as hereinafter provided, and the work of construction or renewal shall be proceeded with simultaneously over the roadway of the said Company, and the remainder of the street, whether the said Company shall conform to the notice aforesaid, or the said Corporation shall perform the work under the power conferred on it in this sub-section."

"If the Corporation give this notice mentioned in next preceding sub-section and do not themselves proceed according to the terms thereof within the time thereby limited, they shall be liable to pay to the Railway Company such damages as may have been thereby occasioned to the said Railway Company."

"Whenever the Corporation of the City shall change any kind of paving, not being macadam, cobble stone or boulder stone, hereafter to be constructed on any street traversed by the said railway, before such paving is worn out whereby the same is dispensed with, the Corporation shall be bound to make good to the said Company the value of the existing paving for the purposes of the said Company, the amount thereof to be ascertained, in case of dispute, by arbitration under the provisions of the Municipal Act then in force; provided that this section shall not apply to paving which the said Company shall not have hereafter constructed or paid for; and provided also that the determination of the City Engineer, evidenced by his certificate in writing, shall be conclusive evidence that the paving is worn out or not, according to the terms of such certificate."

"In every case of construction or renewal of any kind of permanent pavement upon any of the streets occupied by the said Street Railway, the said Company shall have the option of constructing their portion of any such pavement, or, at their request, the said Corporation of the City of Toronto shall construct the same, and in every such case the said Corporation shall assess an annual rate, covering interest and sinking fund, extending over the like period as that upon which the assessment upon the adjacent ratepayers is adjusted, upon the said Company for the cost thereof, not exceeding the said sum of two dollars and fifty cents per square yard; with full power to the said Corporation to raise such sum by an issue of debentures and to collect the same in the manner provided under the Municipal Act for the construction of local improvements."

Under these provisions the City in 1881, and subsequent years, laid down wooden block pavements on several of the streets traversed by the railway, and at the request of the Company, and after the notice above provided for, constructed that portion of the street which the Railway Company had the option of constructing under the above sections, and assessed the cost thereof against the Company, and issued debentures therefor; and the Railway Company, up to the end of 1886, paid to the City the amount due from them on account of such assessments.

The present action was begun in December, 1886, to recover from the Street Railway Company \$1,821.49, which the City had expended in repairing the portions of these block paved streets occupied by the Railway Company, and also to recover certain amounts which the City had been compelled to pay as damages occasioned by reason of the non-repair of these portions of the streets. The Railway Company, in their statement of defence, claimed that they were not liable for the repairs of these streets, because the City had assumed, in pursuance of the Acts above recited, to construct upon them pavements which were intended to be permanent pavements within the meaning of these Acts, but that "the said pavements were not permanent pavements, and were totally inapplicable to and inadequate for the purpose of any street upon which the Street Railway were operating their lines," and that, as a matter of fact, the Street Railway Company had protested from time to

time against the use of such pavements upon streets occupied by them; and they also claimed that the City had been guilty of such *negligence in the construction* of these pavements as to exempt the Street Railway Company from any liability to repair the same.

As to the question of liability for *damages* by reason of accidents caused by the non-repair of the streets, they claimed that the City was primarily liable to keep the streets in repair; that they might have made these repairs themselves and charged them to the Company, and that the Company was therefore not liable for accidents occasioned by streets being left in a condition of non-repair.

The preliminary questions of law raised by these pleadings were fully argued before Judge Rose on the 5th day of February, 1887, whereupon he found as follows:

"1. That the Railway Company is bound to repair permanent pavements.

"2. That it is liable to [damages suffered or paid by the City through or by reason of non-repair.

"3. That the City is bound to use *reasonable care, skill and diligence in selecting pavements*. For example: If the laying of the block pavement on King street demonstrated that block pavements on a street on which the rails of the defendant's Company were laid would not be permanent, the City, as against the defendant's Company, would not have the right to lay another street used by the defendant's Company with block pavement as a permanent pavement; and if neglected could not call upon the defendant's Company to pay for the construction or to repair, and would be liable to such Company for loss occasioned by such negligence.

"4. That the City is bound to use *reasonable care and skill in the construction of permanent pavements*. For example: If a pavement, permanent in its nature (such as asphalt) were so constructed as not to be permanent, the City could not call upon the defendant's Company to pay for construction or to repair, and would be liable to the defendant's Company for loss occasioned by such negligence."

From the date of this judgment (February, 1879) the Street Railway Company ceased to pay anything on account of the debentures for pavements constructed for them by the City under the statutes above recited, and they now refuse to make any further payments on these debentures.

I am instructed to appeal from this judgment and to retain Christopher Robinson, Q.C., in such appeal. I have had a long interview with him and have gone over with him very carefully the Acts of Parliament, the pleadings and the questions raised upon the argument. I regret to say that he is of opinion that an appeal would not be successful. He thinks the Company is entitled to say (when called upon to pay for the repairs of pavements put down by the City under these statutes) that the pavements were not properly selected with reference to the fact that they were to be laid down on streets occupied by a Street Railway; and also, if the pavements were improperly and negligently put down, to avail themselves of this defence in any action against them for the cost of repairs; otherwise, it is clear that the City might render the franchise of the Railway Company valueless by choosing to put down upon their portion of the street a mass of blocks unsuitable for their use, and which would almost immediately require a large amount

of repair. All that Judge Rose requires is that *reasonable* care and skill should be exercised by the City in the selection and construction of pavements, and such an obligation is not, in Mr. Robinson's opinion, excluded by reason or authority. He does not, however, think that the Railway Company could recover back from the City any sum which they have already paid on account of these pavements. As a corollary to these findings of fact, Judge Rose has directed a reference to an arbitrator (not yet named) to enquire and report:

1. "As to the cost of repairs made by the City in reference to the permanent pavements.
2. "Loss or damage suffered by or paid by the City from accidents caused by reason of neglect of the defendant's Company to repair."
3. "Whether the City has been negligent in constructing permanent pavements, and, if so, the loss or damage sustained by the defendant's Company of such negligence."
4. "Whether the City has been negligent in constructing permanent pavements, and, if so, the loss or damage sustained by the defendant's Company in consequence of such negligence."

The question now is whether we shall proceed with this reference or whether it would not be better to attempt some solution of these difficulties by making a new arrangement to take effect from the 31st of December, 1886, (when the Company ceased to pay anything on account of block pavement debentures). I have had more than one conference with the Honorable Frank Smith and Mr. Shepley as representing the Street Railway Company, and I incline to believe that such an arrangement is possible on the following basis: 1. The present action to be dropped, each party paying his own costs. 2. The Street Railway Company to release the City from all claims, set out in Mr. Shepley's letter of December 31st, 1887, including (1) claims for material taken and used by the City; (2) claims for damage to the permanent way of the Street Railway in the construction of the Yonge street and other pavements; (3) claims for damage to the property of the Street Railway during the riots of 1886; (4) the claim to a refund of moneys heretofore paid by the Company on account of block pavement debentures, etc., etc.

"3. The City to release the Street Railway Company from future payments in respect of debentures for *wooden block* pavements and also from all claims to date for moneys paid for repairs and by way of damages for accidents through non-repair.

"4. The Street Railway to pay from and after the 31st of December, 1886, a rental of so much per mile per annum for every mile of street occupied by them, as may be agreed upon.

This would leave the City in complete control of its own streets, but it would be liable to the Street Railway (as to any other person) for all damages occasioned by their non-repair, and the rental should be calculated with reference to this fact.

I submit for your consideration and that of the Council whether an arrangement of this sort would not be better than a protracted litigation on the basis of Judge Rose's judgment. The field of enquiry covered by such a reference is a very large

one, and the reference itself would doubtless occupy a very long time. Then there is the probability of an appeal by either party from the decision of the referee, with further possible appeals to the full Court, the Court of Appeal, the Supreme Court, and even the Privy Council. The litigation would probably last, at all events, until the privilege granted to the Company in 1861 expires by effluxion of time in March, 1891. If, therefore, a settlement by agreement on fair and reasonable terms is possible, I would strongly recommend such a settlement. The condition of some of our streets imperatively demands that this matter be dealt with speedily, and I see no necessity for pursuing litigation which may result in nothing but an enormous bill of damages and costs against the City. If the Council are disposed to take action in this direction, I beg to recommend that the City Engineer be requested to consult with the City Treasurer and report what would be, in his opinion, a fair average rental per mile per annum for every mile of street occupied by the Street Railway Company (whether the streets be of macadam, or wood, or stone), and having in view the fact that henceforth the City would be responsible for all repairs thereof.

I have the honor to be, dear Mr. Mayor,

Your obedient Servant,

C. R. W. BIGGAR.

Cordially approving of the Solicitor's suggestion, and, like him, being assured by the representatives of the Street Railway of their anxiety to meet in a fair and reasonable spirit any suggestion we might make having in view the settlement of all matters in dispute on the lines suggested in Mr. Biggar's letter, I requested the City Treasurer and the City Engineer to prepare from the books of their respective departments a statement showing the cost per mile to the City of the portions of streets occupied by the Street Railway Company, and after adding, in the case of wooden block pavements and macadam roads, a small percentage to cover the cost of repairs, I found that the actual expense per mile to the City of constructing and maintaining these roads would be over \$900 per annum. I therefore proposed (informally) to the Street Railway Company that they should (1) pay up the arrears due on their debentures to the 1st of July, 1888; (2) from this date pay quarterly to the City a rental of \$1,000 per mile for each mile of single track used by them, the City undertaking to keep the roads in thorough repair and waiving all claims for past repairs and for moneys paid by way of damages for such repairs.

After some days of consideration the Company have now positively declined this offer, and have intimated that under no circumstances would they agree to a higher rental than \$500 per mile.

As the present actual mileage of Street Railway in Toronto is (in round numbers) fifty miles of single track, this would be an annual payment of \$25,000; whereas the amount for which under the existing arrangement the Company is annually liable (assuming our pavements to have been reasonably selected and properly constructed) exceeds \$30,000. To expect the City to give up its claim to \$5,000 a year, and at the same time to undertake the burden of maintaining those portions of the streets which the Railway Company is at present bound to keep

in repair, argues, on the part of the Company, a determination to fight it out on the line of Judge Rose's judgment, and endeavor to escape all further liability by proving that our pavements have been improperly selected, or improperly put down, or both.

It seems to me that we should accept the challenge and proceed at once with the reference under Judge Rose's judgment, so as to ascertain as soon as possible what is our exact position and what are the rights of the Street Railway Company over the streets of this City. His Lordship was applied to on Saturday to appoint the Referee and issue his judgment (which at present, and until the Referee is appointed, cannot be acted upon), but the Solicitor for the Street Railway Company desiring to consult his clients as to the name of the Referee suggested, the Judge deferred making any appointment until his return to town after vacation.

From the above statement it will, I think, be abundantly clear to the Council that the responsibility for the present condition of affairs is due not to any apathy on the part of the civil authorities, but wholly to the uncompromising and, I think, unreasonable attitude assumed by the authorities of the Street Railway. If, as the law now stands, we put down stone blocks on their portion of the road, we simply make them a present of \$75,000. We must, therefore, continue to repair the wooden blocks for the present and seek for such reasonable legislation as will enable us to compel the Company to do what is fair in the future.

CL.

Report No. 12 of Committee on Works.

It is recommended that the Toronto Street Railway Company be requested to lay down its tracks on Bathurst street, between College street and Queen street, now that the street is being paved; and also to extend the tracks along Bathurst street, from Queen street to King street, in order to form a connection with the King street cars.

(Appendix 828, to Minutes of Council, July 3rd, 1888.)

CLI.

The following letter to His Worship the Mayor was read in Council on the 27th of July, 1888:—

July 4th, 1888.

To His Worship the Mayor, Toronto:

DEAR SIR,—I beg to hand you herewith a letter received from Geo. F. Shepley, Esq., Solicitor for the Toronto Street Railway Company, embodying the answer of the Company to your informal proposal, made same days ago, for a settlement of all matters in difference between the City and the Company, on the basis suggested last year by the Sub-Committee of the Board of Works.

Yours respectfully,

C. R. W. BIGGAR,

City Solicitor.

(ENCLOSURE).

8th JULY, 1888.

C. R. W. Biggar, Esq.,

City Solicitor, Toronto.

Re BLOCK PAVEMENT.

DEAR MR. BIGGAR,—In pursuance of my promise made at the meeting on Thursday between the Mayor, yourself, the Engineer and the Assistant Treasurer for the City, and Mr. Smith, Mr. Gunn and myself for the Street Railway, I now write you with details of the scheme which I propose by way of settlement of all disputes with regard to pavements.

1. It must, I think, be evident to all of us that the only basis upon which we can work out a new scheme is the basis of starting freed from all past and future difficulties and differences arising out of the unsatisfactory workings of past methods. In the litigation upon this subject between the City and the Company which is now pending, it has been determined that if the City was negligent either in the selection or in the construction of the cedar block pavements, the Street Railway Company is entitled not only to be freed from all future debenture assessments for these pavements, but also to recover back the moneys already paid from year to year upon them. This is a very large sum of money, your treasurer can tell you how large, and I have given you some idea of the documentary evidence which I have preserved upon the point. I desire at this stage to refer you also to Mr. Withrow, who can give you some important information as to the extent to which the public interested in the matter protested (unfortunately without avail), when the Council determined upon the laying of King and Queen streets with cedar blocks. I am thus frank with you because I think that I have noticed during the negotiations upon this subject opened by my letter of 22nd February, 1887, to your predecessor, a spirit on the part of the City authorities of distrust of everything proposed or advanced by me. I have tried to meet the City in a fair spirit, but the attitude of the City has been, so far as I could judge, one of distrust and suspicion. I have therefore gone further than I should otherwise have done in disclosing to you the evidence upon which as I think the Company must inevitably succeed, should the judgment of Mr. Justice Rose be carried out.

2. I am willing, as I have always been, to abandon all claims of the Company in respect of matters past, including among other things, claims (1) For damages caused by the strikers. (2) For material appropriated by the City wrongfully upon altering the pavements. (3) For past payments made by the Company in respect of the block pavements. (4) For delays in the construction of sewers upon the streets occupied by the Company's tracks, occasioning thousands of dollars in damages, for which as for appropriated material, writs have been from time to time issued, while in respect of the block pavement debenture account we have a judgment subject to a Reference. If the City will on its part assume the payment of the debentures still to mature upon these cedar block pavements I will then adopt either of two plans at the City's option. (a) If the City will hand over to us debentures representing \$400 per mile of single track per annum to be repaid by the Company in twenty years I will agree on behalf of the Company to

construct immediately subject to the approval of the City Engineer, and maintain for the term of the debentures the King street route from Sherbourne street to Niagara street, the Yonge street route from King street to Scollard street, and the Queen street route from Sherbourne to the subway similarly to the present roadway on Church street, except that we should lay better stone sets than the sandstone sets on Church street, and that between the double tracks where no team ever travels, we should lay cobble stone (subject, however, to the approval of your Engineer, as pointed out in my letter of 22nd February, 1887.) Beyond this area we would upon all our tracks either maintain at our own expense the existing pavements without any burden upon the City, or we would either immediately or when it became necessary, construct and maintain the same, as a first-class cobble stone pavement, subject to your Engineer's approval, such as was laid upon some forty miles of track recently in Chicago to replace the wooden block pavements there, or (b) We will let you take over the sole responsibility for the control and maintenance of the pavements, and we will pay you \$100 per mile of single track per annum more than we are willing to do the same work for, viz., \$500 per mile of single track per annum, or \$1,000 per mile of double track, and you may then use any kind of pavement you choose, either repairing and maintaining the present pavements, or constructing those which we offered to build for \$400 per annum, or pavements which will cost less, as you please.

3. I do not think it necessary for me to go into the figures laid before you on Thursday, upon which, as I think, it was shown that the pavements mentioned would be constructed and maintained for \$400 per mile per annum. The best part of that is our offer to do the work for debentures amounting to that sum, which we will have to repay in twenty years. If you can show me that the work will cost more, I will consider a modification of my figures.

4. Should the City think proper to reject this, I desire to have it understood that the Company is willing, as I offered in February, 1887, to pay by proper assessments the whole of any sum that may be necessary to put the Company's portion of the track upon a permanent basis, provided that they are given a voice in the selection and method of construction of the pavement.

5. This letter is, of course, without prejudice.

Yours faithfully,

G. F. SHEPLEY.

CLII.

Report No. 16 of Committee on Works.

Your Committee begs to recommend that the Toronto Street Railway Company be notified forthwith upon the completion of the Gerrard street bridge to build and operate a line of street railway from their present terminus on Gerrard street to Broadview avenue, thence north on Broadview avenue to Danforth avenue, and in the event of the said Company refusing or neglecting to comply with this request, according to the provisions made and provided in that case, that the City Council will enter into an agreement with any properly constituted company or parties to build and operate a street railway on the route passed by the Council on the 21st day of February, 1886.

(Appendix 1084, to Minutes of Council, August 20th, 1886.)

CLIII.

CITY OF TORONTO V. TORONTO STREET RAILWAY COMPANY.

Copy letter from City Solicitor to Chairman Board of Works:

SEPT. 4th, 1888.

Ald. Carlyle, Chairman Board of Works, City.

DEAR SIR,—On the 27th July I sent to the Council Mr. Shepley's reply to the City's proposal for the settlement of all matters in difference in this and the other actions pending between the City and the Street Railway Company.

I understood that the letter has been referred to your Committee and I shall be glad to have at as early a date as possible instructions on the subject, so that the suit may be pushed forward without delay. Until Mr. Shepley's proposition is answered in some way, matters must, I fear, remain *in statu quo*; and I am most anxious that there should be no delay in this office in prosecuting the action against the Street Railway Company.

Yours truly,

(Signed)

C. R. W. BIGGAR,

City Solicitor.

CLIV.

In Council :—

Ald. Bell, seconded by Ald. Ritchie, moves that a Special Committee consisting of Ald. Ritchie, Verral, Carlyle (St. Thomas Ward), Dodds and the mover, be appointed to confer with the Board of Directors of the Toronto Street Railway Company, with a view to the re-arrangement and improvement of the lines of the Street Railway running to the western and north-western portions of the City, and that the 38rd and 35th rules of this Council be dispensed with so far as they relate to this motion, which was carried.

(Minute No. 1004, Minutes of Council, September 8th, 1888.)

CLV.

Report No. 18 of the Committee on Works.

Your Committee on Works begs to report that a proposal having been made by the Toronto Transfer Passenger Company to construct a line of street railway along certain streets of the City of Toronto, including Gerrard street, from River street easterly to Broadview avenue, your Committee recommend that in accordance with the arrangement at present existing with the Toronto Street Railway Company, a notice be served upon the said Toronto Street Railway Company, requiring them within one month from the date of such notice being served upon them to consent to construct upon completion of the Gerrard street bridge a line of street railway along Gerrard street, from their present terminus at the west side of River street to Broadview avenue, and thence northerly on Broadview avenue to Danforth avenue; and if they fail to accept such proposal within said month, the Corporation will be at liberty to grant the privilege of constructing such line to any other parties.

(Appendix 1104, to Minutes of Council, Sept. 8th, 1888.)

CLVI.

In Council :—

The following communication was read :

From the Toronto Passenger Transport Co., offering to construct and operate lines of street railway on certain streets in the City.

(Minute No. 1027, Minutes of Council, September 24th, 1888.)

CLVII.

Toronto Street Railway and Parliament Street.

LETTER FROM CITY SOLICITOR TO THE MAYOR :

Oct. 24th, 1888.

To His Worship the Mayor, Toronto :

MY DEAR MR. MAYOR,—I have your letter of the 28rd inst., asking my opinion as to the right of the Toronto Street Railway Company to lay down a second track on Parliament street, between Gerrard and St. David streets, without consent from the Committee on Works or the Council.

I have read and carefully considered the original agreement between Easton and the City and the Statutes subsequently passed ; also such of the resolutions of Council as are thus far printed in the Street Railway pamphlet, now in press.

The question is by no means free from difficulty, and I give my opinion with considerable hesitation, because the line of the Street Railway on Parliament street north of Queen, appears to have been laid down by the express request of the Council, and not at the instance of the Railway Company ; but on the whole I am of the opinion that this case is governed by the fifth resolution contained in the original agreement between Easton and the Company, which is as follows :

" The location of the line of railway in any of the streets shall not be made until the plans thereof, showing the position of the rails and other works in each street shall have been submitted to and approved of by the City Surveyor."

Mr. Sproatt informs me that the plans of this new track were never submitted to or approved of by him, I therefore think that the Street Railway had no right to put it down. Before advising what action should be taken in the matter, it would however be desirable to ascertain how long ago this track was put down, so as to know if we have not forfeited, by delay, our right to insist on its removal.

Yours truly,

(Signed) C. R. W. BIGGAR,

City Solicitor.

CLVIII.

Committee Report.

Your Committee begs again to forward to Council the following offer of the Toronto Passenger Transport Company to lay down and operate a Street Car service on certain streets of the City between the Union Station, on Simcoe street, to Danforth avenue :

To the Council of the Corporation of the City of Toronto :

GENTLEMEN,—We hereby withdraw all former offers or proposals, and we substitute the following instead :

We propose to construct and operate a double track line of railway upon the following streets and avenues of the City of Toronto, namely : Commencing at the intersection of Simcoe and Front streets ; thence along Simcoe street to Adelaide street ; thence along Adelaide street to Jarvis street ; thence along Jarvis street to Duchess street ; thence along Duchess street to George street ; thence along George street to Wilton Avenue ; thence along Wilton Avenue to River street ; thence along River Street to Gerrard street ; thence along Gerrard street to Broadview avenue ; thence along Broadview avenue to the north side of Danforth avenue.

If the Council give us permission to build the above line we will at once enter into bonds with sureties satisfactory to your honorable body, and bind ourselves to perform the following acts and things :

1. We will have the road in first-class running order before the first day of July, A.D. 1889, provided we secure the right to do so before the 1st day of January, 1889, or within six months from the time we may acquire the said right.
2. We will place conductors on all cars.
3. Fare shall not exceed 5 cents. We will cause twenty-five tickets to be sold for one dollar, and six for twenty-five cents.
4. We will use the most approved rails, such as may be designated by the City Engineer or your honorable body.
5. We will run cars once every ten minutes during the busier parts of the day, between such hours as the Council may designate, and less often as the Council may direct.
6. We will construct, repair and maintain all the roadway between the tracks and for two feet outside of the tracks, of the same class of roadway as the rest of the street, or of such other material as the Council may direct, provided the same be used in other roadways of any city in Canada or the United States.
7. We consent to render up the franchise and all rights and privileges thereunder at the same time and in the same manner as the Toronto Street Railway Company may be required to do.

8. We agree that when any amalgamation or pooling arrangement with the Toronto Street Railway Company, without the consent of your Council shall take place, all the real and personal property of the undersigned Company, together with the franchise and all privileges thereunder, shall revert to the City.

9. We will pay annually a sum equal to two per cent. of our gross annual receipts (from passenger traffic) for the purposes of the City.

10. We will issue through tickets at single fare from any one of the lines herein referred to or that may hereafter be constructed or operated by us.

11. We also offer to construct and operate upon the above terms a line of street railway over the route adopted by your Council on the 21st day of February, 1886, namely: "Commencing at the intersection of Front and Simcoe streets; thence along Simcoe street to Adelaide street; thence along Adelaide street to Victoria street; thence along Victoria street to Wilton avenue; thence along Wilton avenue to River street; thence along River street to Gerrard street; thence along Gerrard street to Broadview avenue; and thence along the said Broadview avenue to the north side of Danforth avenue."

THE TORONTO PASSENGER TRANSPORT CO.

Toronto, Sept. 12th, 1888.

"Your Committee therefore begs to report that they have carefully considered the above proposals of the Toronto Passenger Transport Company, dated 12th September, 1888, transmitted by the Council to your Committee. And the attention of your Committee having been drawn by the City Solicitor to the fact that the following Reports of your Committee and amendments thereto have been adopted under a misconception as to the form of procedure, your Committee therefore, in order to avoid misunderstanding, and on the advice of the City Solicitor, recommend that Reports Nos. 29 of the Committee on Works for 1887, 32 of the Committee on Works for 1887, and amendments in Council thereto, 18 of the Committee on Works for 1888, and all amendments thereto, in so far as the same may refer to street railway service, be rescinded.

"Your Committee therefore further recommend that the nature of the said proposals be communicated to the Toronto Street Railway Company, as provided by section 24 of By-law 353, and that the said the Toronto Street Railway Company be offered the option of constructing the lines of street railway over the routes set forth in the said proposals upon the terms and conditions stipulated in By-law 353."

By Report No. 38 of the Executive Committee, which was adopted by Council, the above recommendation and communication was referred back to the Committee on Works for the purpose of securing the corporate seal of the said Company, ascertaining the *personnel* of the said Company, and for the purpose of ascertaining the nature of the security that the Company proposed to offer for the due fulfilment of any contract that the said Company may enter into with the Corporation. Your Committee referred the above matter to the City Solicitor, who informs us that at the date of the proposals above set forth, the said Company

consisted of John Arthur Macdonald and Charles William Nash, trading under the firm name of "The Toronto Passenger Transport Company," the certificate of which partnership was duly registered, and the proposals therefore require no seal, and that the Act respecting Street Railways, R. S. O. cap. 171, provides that "Any private person or firm may exercise any of the powers which, under this Act, may be exercised by a company."

As to the nature of the security that the Company offers for the due fulfilment of any contract that the Company may enter into, your Committee would say that the time for asking for security has not yet arrived, but the Company offers to give such security as the Council may require.

Your Committee therefore recommend the adoption of their former recommendation hereinbefore set forth in the above extract from Report No. 20 of the Committee on Works.

(Appendix 1896 to Minutes of Council, October 30th 1888.)

CLIX.

Toronto, Nov. 21st, 1888.

To His Worship the Mayor of Toronto :

DEAR SIR,—I thought it would be well to say to you that the Toronto Street Railway Company have finally decided to put down a double track on Broadview avenue, from Queen street east to Danforth avenue. This will require a double track also on Queen street east, and the line will then be operated from the Union Station to the Danforth Road. We will also extend the Gerrard street line across the bridge, eastward on that street. The work will be started as early as possible in the spring, and we hope to have it running on or before the Queen's Birthday of next year. Hoping that this meets with your approval and carries out your wishes, I remain,

Yours respectfully,

(Signed) FRANK SMITH,

President Toronto Street Railway Co.

CLX.

Toronto, Dec. 7th, 1888.

To the Mayor and Corporation of the City of Toronto :

GENTLEMEN,—With reference to the proposals of the Toronto Passenger Transport Company, communicated to this Company by the City on or about the 8th of November, 1886, in supposed pursuance of the 24th clause of the resolutions embodied in the agreement between the City and Alexander Easton, made on the 26th of March, A. D. 1861, I have to point out—

That the Toronto Passenger Transport Company is not a company which has by its charter any such powers as would enable it to enter into or carry out any agreement for the construction or operation of a line of street railway track. This circumstance has no doubt escaped the attention of the Council. The result of

this is that the proposals made by that Company are not within the 24th clause above referred to, and that the City was not, under these circumstances, in the position to give the notice of the 8th of November.

The attention of the Council is also directed to the fact that this Company has already agreed with the City to furnish accommodation to the district proposed to be served by the scheme in question. This service was and is contemplated to be effected by the extension of the present Gerrard street line across the Don and so up Broadview avenue; and also by the construction of a line of track up Broadview avenue from its intersection with Queen street. It cannot, we think, be doubted that this scheme will better serve the people interested than the scheme proposed by the Toronto Passenger Transport Company. These lines this Company is ready and willing to construct and operate as agreed upon; and further, that inasmuch as the scheme of the Toronto Passenger Transport Company covers a portion of the ground occupied by the scheme which this Company has, as mentioned above, agreed to carry out, it is not competent for the City to entertain the proposals of the former Company without disregarding the agreement between the City and this Company.

Yours truly,

(Signed)

FRANK SMITH,

President Toronto Street Railway Co.

CLXI.

The order founded upon the findings and judgment of the Hon. Mr. Justice Rose in the action of the City of Toronto v. The Toronto Street Railway Company (*ante* pp. 163-4), was finally settled by the learned Judge and issued on the 20th of December, 1888, as follows :—

IN THE HIGH COURT OF JUSTICE.

QUEEN'S BENCH DIVISION.

BEFORE THE HON.

MR. JUSTICE ROSE, THURSDAY, THE 20TH DAY OF DECEMBER, 1888.

BETWEEN

THE CORPORATION OF THE CITY OF TORONTO,

Petitioners :

AND

THE TORONTO STREET RAILWAY COMPANY,

Defendants.

This action having on the 5th day of February, 1888, come on to be heard before the Honourable Mr. Justice Rose at the sittings of this Court for the trial of actions held at the City of Toronto in the presence of counsel for the plaintiff and for the defendant, upon hearing read the pleadings and what was alleged by counsel on both sides :

This Court doth declare and adjudge.

1. That the defendant Company is bound to keep in repair such permanent pavements as the plaintiff Corporation may have laid upon the streets used by the defendants for the purpose of its traffic over the space between the tracks of and for eighteen inches outside the same.
2. That the defendant Company is liable to pay to the plaintiff such damages as it may have suffered or paid by reason of the non-repair by the defendant of such permanent pavements aforesaid, over the space aforesaid.

3. That the plaintiff was, and is bound to use reasonable care, skill and diligence in selecting pavements to be laid as permanent pavements over the space aforesaid, and over the remainder of the said streets so far only as the pavement upon said spaces has been or is affected thereby; and if negligent in such selection the defendant is not liable to pay for such construction or to repair as for a permanent pavement; and if such reasonable care, skill and diligence in such selection was not exercised by the plaintiff Corporation, it is liable to the defendant for any loss occasioned by such negligence.

4. That the plaintiff was, and is bound to use reasonable care and skill in the construction of such permanent pavements on the streets aforesaid, and on the remainder of the said streets so far only as the pavement on the space aforesaid has been or is affected thereby; and if such pavements were so negligently constructed as not to be permanent, the defendant is not liable to pay for such construction or to repair, and the plaintiff was and is liable in such case to the defendant for any losses caused by such negligence.

5. And this Court doth further order and direct that it be referred to Edmund John Senkler, Esquire, of the City of St. Catharines, under sub-section one of section 101 of "The Judicature Act," to enquire and report:—

(1) Whether the plaintiff Corporation has laid permanent pavements upon the streets occupied by the defendant Company, due regard being had to the occupation of the streets by the Company and otherwise, and to all and every other matter or cause affecting the said pavements and entering into the consideration of the question of their permanence.

(2) As to the cost of repairs made by the plaintiffs to permanent pavements on the streets occupied by the defendant Company.

(3) The loss or damage which has been suffered or paid by the plaintiff for or by reason of accidents caused by the neglect of the defendant to repair such portions of the said streets.

(4) Whether the plaintiff has been negligent in selecting pavements as permanent on streets occupied by the defendant, and if so, the loss or damage, if any, sustained by the defendant from such negligence.

(5) Whether the plaintiff has been negligent in constructing the aforesaid permanent pavements, and if so, the loss or damage, if any, sustained by the defendant from such negligence.

6. And this Court doth further order that on the motion for judgment all questions of law or fact arising upon the pleadings or report of the said referee, and not determined by the Court in the 1st, 2nd, 3rd and 4th findings of the Court as aforesaid, shall be open for argument, and that this declaration shall not be construed as restricting or taking away from the parties any right reserved or given to them by the said sub-section 1 of section 101 or the practice thereunder, but shall be construed as adding to or enlarging such rights, if those given by this order are not reserved or given to the said parties by said sub-section.

7. And this Court by consent do further order and adjudge that upon such reference the referee be allowed and paid the fees payable to professional arbitrators, and that the same be costs in the action.

CLXII.

From this judgment the City at once appealed to the Court of Appeal for Ontario and served the following :—

REASONS FOR APPEAL.

The Appellant the Corporation of the City of Toronto appeals from the judgment of the Hon. Mr. Justice Rose in this action, upon the following amongst other grounds :—

1. The learned Judge should have declared that The Toronto Street Railway Company, the Respondent herein, is bound to repair not only the portions of the streets within the spaces indicated in the said judgment as "permanent pavements," but also *all of the roadway within the spaces aforesaid, whether paved with permanent pavements or otherwise.*
2. That the learned Judge should have declared that the Respondent is liable to pay all damages which the Appellant may have suffered or paid by reason of the non-repair by the Respondent, *not only of the permanent pavements aforesaid, but also in respect of all the roadways within the spaces aforesaid whether paved with permanent pavement or otherwise.*
3. The learned Judge should not have found that the Appellant was under any obligation to the Respondent to use care, skill and diligence in selecting pavements to be laid as permanent pavements over the aforesaid spaces, but should have found that if the Appellant in good faith selected any of the kinds of pavement referred to in the Acts of Parliament in question, the Respondent was and is bound by such selection; and the Appellant submits that the aforesaid Acts of Parliament conclude and debar the Respondent from contending that "wooden pavements" mentioned in the said Acts are not "permanent pavements" within the meaning of said Acts.
4. The Appellant further submits that unless it be proved that there was *mala fides* in the selection of the pavements aforesaid, the Respondent is liable to pay for their construction and to repair them, and that the Respondent is liable to the Appellant for any loss caused by the negligence of the Respondent in respect of such construction and repair.
5. The Appellant further submits that the learned Judge should not have found that if the pavements were so negligently constructed as not to be permanent the Respondent is not liable to pay *anything* for the construction thereof or to repair the said pavements; but the declaration ought to have been that in case the Appellants were proved to have been negligent in the construction of pavements alleged to be permanent then the Respondent Company should at all events be made liable to the extent of the benefit which it received in the shape of a roadway used and occupied by the Respondent Company, and which (although perhaps not permanent) yet so far answered the requirements of the Respondent that the Respondent's traffic thereon had been continuous.

6. The learned Judge should also have found that the Appellant is entitled to recover for repairs whether the roadways constructed by the City were "permanent" or not, the right of the Appellant being to recover against the Respondent for roads made and repaired at all events *to the extent of the benefit accruing to the Respondent*, where such roads have been actually occupied and used by the Respondent.

7. The learned Judge should have found that if the Appellant acted in good faith in the selection of the permanent pavements for the portions of the roads aforesaid, this determination cannot be questioned by the Respondent; as under the Acts in question, the selection is not left to the Respondent but to the Appellant.

8. The learned Judge should not have found that if the pavements in question were not "permanent" the Appellant is liable to the Respondent for loss or damage, but should have found that the Appellant was not responsible unless the pavements were so negligently constructed, or in so bad a state of repair that the loss or damage complained of by the Respondent arose from such cause.

9. The Appellant further submits that unless the pavements selected and constructed by them upon the portions of their streets occupied by the tracks of the Respondent were so selected or constructed that the laying down of the same amounted to non-repair of said streets, within the meaning of the Municipal Act, the Respondents have no right to claim or recover damages against the Appellants for such selection or construction.

S. H. BLAKE, Q.C.

C. R. W. BIGGAR.

CLXIII.

Pending the said appeal, negotiations were resumed between the Solicitors for the City and the Street Railway, the result of which appears in the following extract from the inaugural address of Mayor Clarke to the City Council on the 21st January, 1889:—

STREET RAILWAY LITIGATION.

I have much pleasure in announcing to the Council that the long pending litigation between the City and the Street Railway Company (which had assumed a very serious phase for the City, and one apparently destined to cause serious delay in the necessary improvement of our streets), seems now to be in a fair way towards satisfactory and reasonable adjustment.

The Council will remember that in December, 1886, the City sued the Street Railway Company to recover some \$4,800, made up of:

(1) The cost of certain repairs done at the request of the Company upon those portions of the streets which the Railway Company was under obligation to keep in repair, and

(2) Of certain sums paid by the City by way of damages and costs to persons who had sustained injury through the non-repair of these portions of the streets.

The Company raised the defence that it was not liable to pay these damages, or to repair these pavements, or even to contribute anything towards their construction—because (as it alleged) the pavements in question was not “permanent pavements,” for which alone it was liable to pay under the Act of 1877; and that these pavements were both improperly selected and improperly constructed, taking into account the existence on these streets of the tracks of the Company’s railway.

The case was heard by the Hon. Mr. Justice Rose, who, in February, 1887, gave judgment, declaring the City responsible to the Railway Company for the proper selection and construction of pavements on streets traversed by the tracks of the Company, and that, if the City had been negligent in either the *selection* or the *construction* of these pavements, the Railway Company was not only exempt from liability to contribute toward their construction or repair, but that it had also a right to recover from the City any damage sustained by the Company by reason of such negligence.

His Lordship directed a reference to Judge Senkler, of St. Catharines, to determine—

“1. Whether the City had laid “permanent pavements” upon the said streets, regard being had to the occupation thereof by the Company.

2. Whether the City had been negligent in *selecting* the said pavements as “permanent pavements,” and if so, the loss and damage sustained by the Railway Company on account thereof; and

3. Whether the City had been negligent in *constructing* the said pavements, and, if so, the Company’s loss and damage by reason thereof.”

It will be obvious to any one who considers the scope of such a reference, that the evidence to be taken must be largely that of engineers, etc., and also that the enquiries directed by Judge Rose would occupy a great deal of time, would involve us in very heavy expense for counsel and expert witnesses, and that unless we were able to prove that there had been no negligence whatever on the part of the City either in *selecting* or *constructing* our cedar block pavements, the Company would not only escape all liability for construction or repairs, but might even recover large damages against the City.

On the strength of the above judgment the Company refused to continue any longer to pay for the construction or repair of the pavements used by them, and we have been so far unable to compel them to pay any sum due since the 31st of December, 1886.

Negotiations were at once commenced between the Company and the City, with a view to a settlement of the matters involved in the action. These negotiations continued all through 1887, and also during the earlier months of last year, until I became convinced that it was useless to attempt any settlement with the Street Railway Company on the lines of Judge Rose’s judgment.

The case was then entrusted to Mr. S. H. Blake, Q.C., who advised us to fight it out, and who, (with Mr. Christopher Robinson, Q.C.) gave us most valuable assistance in settling the terms of the decree, which was finally issued on the 20th of December last.

Upon the terms of this decree being thus finally settled by His Lordship Mr. Justice Rose, we were advised by both these learned counsel (and also by the City Solicitor) to take the opinion of the Court of Appeal before proceeding further; and the case was accordingly transferred to that court.

During the printing of the appeal book, negotiations were re-opened between the Solicitors for the Company and the City. I am glad to say that these negotiations resulted last Saturday in the settlement (subject to the approval of the Council) of a proposed outline agreement disposing of all the matters in difference between the City and the Company.

The text of this proposed agreement is as follows :

MEMO. OF HEADS OF AN AGREEMENT

proposed to be made between

THE CORPORATION OF THE CITY OF TORONTO, HEREIN CALLED "THE CITY,"

and

THE TORONTO STREET RAILWAY COMPANY, HEREIN CALLED "THE COMPANY."

All matters in issue in the several actions which were pending between the City and the Company on December 31st, 1888, and all claims therein made by the Company upon the City, and *vice versa*, up to said date are to be settled on the following basis :

1. The Company is to pay the City forthwith the amount of the Company's debenture account for 1887 (\$17,095.36), with interest at five per cent. from December 31st, 1887, and for 1888 (\$22,373.56) with interest at five per cent. from September 10th, 1888, to date of payment:

2. From December 31st, 1888, the Company is to pay the City in lieu of all claims on account of debentures maturing after that date, and in lieu of the Company's liability for construction, renewal, maintenance and repair in respect of all the portions of streets occupied by the Company's tracks, at the rate of \$600 per mile of single track (or \$1,200 per mile of double track) *per annum*, so long as the franchise of the Company to use said streets, or any of them, now extends : such sum to be paid quarterly, on January 1st, April 1st, July 1st and October 1st in each year, in respect of the three months immediately preceding said dates respectively; the first of such quarterly payments to be made on the 1st of April, 1889, and if there be a broken quarter, then at the same rate for such broken quarter on the last day thereof.

3. The mileage of tracks in respect of which each quarterly payment is to be made is to be ascertained, determined and certified quarterly by two Engineers appointed therefor, one by the City, and the other by the Company, and, in case

they disagree, then by an Engineer to be appointed by the two so appointed, or by a Judge of the High Court of Justice, on the application of either party.

4. The said payments shall be accepted by the City in full satisfaction and discharge of all claims upon the Company in respect of the construction, renewal, maintenance and repair of all the aforesaid portions of the said streets, and also in respect of all claims by the City upon the Company for damages and costs suffered or paid by the City by reason of the non-construction or non-repair thereof by the Company; and hereafter the City shall undertake the construction, renewal, maintenance and repair of all the aforesaid portions of the said streets; but not of the Company's tracks, ties and stringers.

5. As between the Company and the City, the City shall have the sole right in every case and from time to time to determine the kind of roadbed or roadbeds, pavement or pavements (if any) to be laid down, constructed and maintained upon the said streets or upon the portions thereof occupied and used by the Company, and the manner in which the same shall be constructed; and the liability of the City to the Company in respect of the construction, renewal, repair and maintenance of roads shall be as defined by section 581 of "The Municipal Act," save that the City shall be bound to indemnify the Company against any damages or costs which the Company may have to pay to third parties by reason exclusively of neglect on the part of the City to repair or to keep in repair the portions of streets aforesaid.

6. The City is to do the aforesaid work of construction, renewal, maintenance and repair with reasonable despatch, so that the Company's traffic may not be unreasonably interrupted; and where it is not necessary to remove the said tracks, ties or stringers, due care shall be exercised so that no unnecessary damage may be done thereto; and in any case the Company may itself do the work of removal of the tracks, ties or stringers, should it be necessary in the opinion of engineers (to be appointed as in the third paragraph hereof), that the said ties, stringers and tracks should be removed, in order to the proper performance or execution of any said works.

7. In case it may be necessary at any time to take up any of the roadbeds occupied by the Company's tracks, or any portion thereof, to allow the Company to lay down tracks thereon, or to renew, replace or repair tracks, ties or stringers, the Company shall give ten days notice in writing to the City Engineer of their desire to have such roadbeds taken up, specifying therein the portion of the roadbeds so to be taken up, and the time which will be required for constructing, repairing or renewing their tracks, ties and stringers; and the City Engineer shall thereupon have the said roadbeds taken up; and the expense of such taking up and of the relaying of the same in as good condition as before shall be ascertained and certified by the City Engineer, and the amount so certified shall be a debt from the Company to the City, payable forthwith on demand, or recoverable with costs by action in any court of competent jurisdiction.

8. The Company shall prosecute the work of laying such tracks or of renewing and replacing such tracks, ties, or stringers with all reasonable despatch; and in case the same is not proceeded with and completed within the time specified in the original notice (or within such further time as the City Engineer may by

writing under his hand allow) the City may replace or relay the said roadbeds; and the expense of the taking up and relaying thereof shall be ascertainable and recoverable from the Company as in the last section mentioned.

9. This agreement is not to affect the rights of either party in respect of any of the matters referred to in the 18th resolution set out in By-law 358 of the City of Toronto, or of any question arising out of the same, nor in respect of any matter not herein specifically dealt with; nor shall this agreement have any operation beyond the period over which the Company's franchise now extends.

10. In consideration of the foregoing, it is further agreed that all claims by the City against the Company in respect of constructions or renewal of roadways, repairs of roadways and damages by reason of non-repair thereof, up to the date of this agreement, shall be abandoned; and that all actions pending on 31st December, 1888, between the City and the Company shall be forthwith dismissed by the respective plaintiffs therein without costs.

11. The Company is to abandon all claims of every nature against the City up to the date of said agreement.

12. In case this basis is approved by the City Council, a more formal agreement is to be drawn up embodying the above heads, and is to be settled by John Hoskin, Esq., Q.C., in case the parties differ as to terms; and both parties agree to concur in applying as speedily as possible for any legislation which either of them may consider necessary to confirm said agreement.

Dated January 19th, 1889.

Approved. (Subject to approval by the City Council.)

C. R. W. BIGGAR,

For City of Toronto.

Approved.

GEO. F. SHEPLEY,

Solicitor for Toronto Street Railway Co.

The Council will observe that this agreement,

(1) Secures the immediate payment of the Company's Debenture Account for 1887 and 1888, amounting to about \$40,000, with interest at five per cent. unpaid.

(2) That from the 31st of December last the City shall have sole control of its streets, and the right to determine what kind of road-bed or pavements shall be put down and how they shall be constructed, the Company paying for the use of all streets occupied by them, no matter whether paved or macadamized, an annual rental at the rate of \$600 per mile of single track per annum in quarterly instalments.

(3) That this arrangement shall extend only until the expiration of the current term of the Company's franchise, which ends on the 14th day of March, 1891.

I would suggest that this proposed agreement be referred to a special Committee for consideration and report. I trust it will be found to afford the basis of a fair and equitable solution of the difficulties which for the past two years have prevented us from putting many of our most important streets into a condition alike creditable to the Council and satisfactory to the public.

(Signed)

E. F. CLARKE,

Mayor.



APPENDIX.

The following documents seem to be material, and (though not included in the compilation prepared by my predecessor) are printed herewith. The members of the City Council, though individually asked to suggest any other relevant document, have not responded, and I am not myself aware of anything else which should be included in this pamphlet.

C. R. W. BIGGAR,

City Solicitor.

April 26th, 1889.

CLXIV.

AGREEMENT

Between the Corporation of Yorkville and the Toronto Street Railway Company.

THIS INDENTURE, made the eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty-one, between THE CORPORATION OF THE VILLAGE OF YORKVILLE, of the First Part, and THE TORONTO STREET RAILWAY COMPANY, of the Second Part.

Whereas, certain persons were by an Act of the Legislature of the Province of Canada, intituled "An Act to incorporate the Toronto Street Railway Company," incorporated as a body corporate and politic for the purposes therein mentioned, by the name of "The Toronto Street Railway Company," the parties hereto of the Second Part.

And Whereas, the said Company was in and by the same Act (among other things) empowered to construct, complete, maintain, and operate a double or single iron railway, with the necessary side tracks, switches, and turn-outs for the passage of cars, carriages, and other vehicles adapted to the same, upon and along any of the streets and highways in the City of Toronto and the municipalities immediately adjoining the limits of the said City, or any of them, and to take, transport, and carry passengers upon the same by the power and force of animals, and to construct and maintain all necessary works, buildings, and conveniences connected therewith.

And Whereas, in and by the said Act, full power and authority was given to the parties of the second part to use and occupy any and such parts of any of the streets or highways aforesaid as may be required for the purpose of their railway track, and the laying of the rails and the running of their cars and carriages, provided that the consent of the said City and municipalities respectively shall be first had and obtained, which are by the said Act respectively authorized to grant permission to the said parties of the second part to construct their railway as aforesaid within their respective limits, across and along, and to use and occupy the said streets or highways, or any part of them, for that purpose, upon such conditions and for such period or periods as may be respectively agreed upon between the parties of the second part and the said City or other municipalities aforesaid, or any of them.

And Whereas, in and by the said Act the said City and the adjoining Municipalities or any of them and the said parties of the second part, are respectively authorized to make and to enter into any agreement or covenant relating to the construction of the said railway for the paving, macadamizing, repairing and grading of the streets or highways, and the construction, opening of and repairing of drains or sewers, and the laying of gas and water pipes in the said streets and highways; the location of the railway and the particular streets along which the said shall be laid, the pattern of rail, the time and speed of running the cars, the amount of license to be paid by the Company annually, the amount of fares to be paid by passengers, the time within which the works are to be commenced, the manner of proceeding with the same, and the time for completion, and generally for the safety and convenience of passengers, the conduct of the agents and servants of the Company, and the non-obstructing and impeding of the ordinary traffic.

And Whereas, the Corporation of the City of Toronto on the twenty-second day of March, in the year of our Lord one thousand eight hundred and sixty-one, entered into an agreement bearing that date under the seal of the City with Alexander Easton, the present President of the parties of the second part, and acting in the expectation that the parties of the second part would be thereafter duly incorporated in regard to divers matters such as mentioned in the last foregoing recital.

And Whereas, the said parties of the second part having, upon the conditions in said agreements set forth, obtained from the Corporation of the said City permission to use and occupy certain streets in the said City, including Yonge street so far as the same is within the boundaries of the said City, for the purpose of their track, and the laying of the rails and the running of their cars and carriages, are desirous of obtaining similar permission from the Corporation of the Village of Yorkville, a municipality immediately adjoining the said City, and under and pursuant to the said Act to enter into a corresponding agreement with the Corporation of the said village.

And Whereas, the parties hereto of the first part, being the Corporation of the said village, are willing to grant such permission as to so much of Yonge street aforesaid as is within the boundaries of the said village, upon the terms and conditions hereinafter set forth, and to enter into an agreement with the said parties of the second part such as hereinafter contained :

NOW THIS INDENTURE WITNESSETH, that the said parties of the first and second parts have covenanted and agreed, and by these presents do covenant and agree, each with the other of them, as follows :

First.—That the said parties of the second part be permitted without let or hindrance from the said parties of the first part, to lay down the continuance of their street railway along so much of Yonge street in the Village of Yorkville as is situate between the northern boundary of the City of Toronto and the northern boundary line of the said village where the same crosses Yonge street, of the same materials and of the same dimensions as authorized by the Corporation of the City of Toronto, but under such regulations as the said parties of the first part may see fit from time to time to make, ordain and declare.

Second.—That the track of the railway shall be laid by the said parties of the second part of such rails as may be approved of by the Corporation of the City of Toronto, and actually used in the streets of the said City, and the rails shall be laid flush with the surface of the street, and conform to the grade thereof as now established, or as it may be from time to time altered or established.

Third.—That the said parties of the second part shall keep the surface of the street inside of the rails, and for one foot outside thereof, in good order and repair, and all dirt and filth cleaned and removed therefrom, as the said parties of the first part may from time to time order and direct.

Fourth.—That the said parties of the second part shall pave or macadamize the roadway between and within at least one foot six inches (or as much as the ties project) from and outside of each rail, and the same constantly keep in repair.

Fifth.—That the said parties of the second part shall also construct and keep in good repair the crossings at the section of every such railway track and cross streets or other crossings, to the extent of the said railway track and one foot on each side thereof, of a similar character to those in use by the said parties of the first part within the limits of the village.

Sixth.—That the said parties of the second part shall cause the railway to be constructed in the centre of the street if a single track, and if of a double track the inside rail of each track shall be laid within one foot and six inches of the centre of the street, said rails to be so laid as to accommodate the width of ordinary carriage wheels or otherwise as may hereafter be agreed upon between the said parties.

Seventh.—That when the said parties of the second part shall have completed one track of the said railway and placed cars thereon for the public use, it shall be lawful for them at any time thereafter within the period of five years to build a second track, so that they do not interrupt the running in the ordinary way of the cars on the first completed track.

Eighth.—That it shall be lawful for the said parties of the first part, after reasonable notice to the said parties of the second part of their intention to take up any part of the street traversed by the rails, either for the purpose of altering the grade thereof, constructing or repairing drains, or for laying down or repairing

gas or water pipes, or for all other purposes within the province and privileges of a Municipal Village Corporation, without the parties of the second part being entitled to any compensation for damages or otherwise occasioned by the working of the railway or works connected therewith.

Ninth.—That the cars shall be run by the said parties of the second part over so much of the track as lies to the south of the Town Hall in the said village at least sixteen hours in summer and fourteen hours in winter on each day, at intervals of no greater than thirty minutes.

Tenth.—That the speed of the cars shall never exceed six miles per hour.

Eleventh.—That when the accumulation of snow or ice in the roadway shall be such as to impede the traffic, every means shall be used by the said parties of the second part to clear the track, and while impeded the said parties of the second part shall provide sleighs sufficient for the accommodation of the public.

Twelfth.—That no higher fare than five cents shall be charged for the conveyance of each passenger on the line from any one point along the line in the village to any other point along the line in the same village, and that five cents shall be the maximum fare to be charged to any passenger from the Town Hall in the village to the St. Lawrence Hall in the City, or to or from any intermediate point.

Thirteenth.—That the said parties of the second part shall be liable for all damages to individuals arising out of the construction of, or operation of their railway, and hold the said parties of the first part in all respects harmless in respect thereof.

Fourteenth.—That if the said parties of the second part neglect to keep the track or the roadway or crossing between and on each side of the rails in good condition, according to the terms of this agreement, or to have the necessary repairs according to this agreement made thereon, the said parties of the first part may give notice requiring such repairs to be forthwith made, and if not made within a reasonable time the said parties of the first part may cause the repairs to be made and the expense thereof may be recovered at the suit of the said parties of the first part from the said parties of the second part in any court of competent jurisdiction, and be a lien on the cars of the said parties of the second part at any time within the said village.

Fifteenth.—The track on and over so much of Yonge street as lies to the south of the town hall in the village shall be constructed and fully equipped within twelve calendar months from this date.

Sixteenth.—The privileges granted by the present agreement shall continue for a period of thirty years from the twenty-second day of March, in the year of our Lord one thousand eight hundred and sixty-one.

Seventeenth.—That if the said parties of the second part at any time give up the railway, or cease to exercise the privileges hereby granted by the said parties of the first part for a period of three calendar months, they, the said parties of the second part, shall forfeit the entire property within the limits of the said village, including railway stock, to the said parties of the first part.

Eighteenth.—That if the said parties of the second part shall fail to complete the aforesaid railway within the said village according to the conditions herein prescribed, then the rights and privileges granted herein or otherwise to the said parties of the second part, together with all or any improvements made upon the railway within the said village shall be forfeited, unless the said parties of the first part shall give to the said parties of the second part a further extension of time; provided that no detention be caused by any action of courts of law or other authorities.

Nineteenth.—That in the event of any other parties proposing to construct railways on any of the streets within the present limits of the village, or any extended limits thereof, and not now occupied by the parties of the first part, or which they are now authorized to occupy, the nature of the proposals thus made shall be communicated to the said parties of the second part, and the option of constructing such proposed railway on similar conditions as are herein stipulated shall be given to the said parties of the second part, but if such preference be not accepted within one calendar month, the said parties of the first part may grant the proposed privilege to any other persons or bodies corporate.

Twentieth.—That during the term of thirty years herein and hereby granted, the said parties of the first part shall not, without the consent in writing of the said parties of the second part, under their corporate seal, make any regulations in regard to the construction or operation of said railway, at variance with the terms of this agreement or the rights of the said parties of the second part thereunder, and that if any such regulations be made without such consent, the same or so much thereof as shall be at variance as aforesaid shall be void and of none effect upon the parties of the second part.

IN WITNESS WHEREOF the parties of the first part have hereto affixed the corporate seal of the Corporation of Yorkville, and these presents are signed and countersigned by the reeve and clerk of the said Corporation, on behalf of the said village.

And the parties of the second part have hereto affixed the corporate seal of the Toronto Street Railway Company, and these presents are signed and countersigned by the president and secretary of the said Company on behalf of such Company, on the day and year first above written.

Signed, sealed and delivered,
in presence of

J. F. PATERSON,
CALVIN BROWN.

WILLIAM ROWELL,
Reeve of Yorkville.

WM. H. ARCHER, [L. S.]
Clerk of Yorkville.

ALEXANDER EASTON,
Pres. Toronto St. Railway Co.

W. ANDERSON, [L.S.]
Secretary Toronto St. Railway.

CLXV.

AGREEMENT

Made and entered into this twenty-ninth day of July, one thousand eight hundred and eighty-one.

BETWEEN

THE CORPORATION OF THE CITY OF TORONTO,

Of the first part.

AND

THE TORONTO STREET RAILWAY COMPANY,

Of the second part.

WHEREAS by the adoption (after amendment) of Report No. 22 of the Committee on Works, the Council of the Corporation of the City of Toronto have authorized the construction of certain new lines of street railway in the City of Toronto, and also the extension of certain existing lines along the streets mentioned in said Report No. 22, as amended in Council, upon the terms and conditions set forth in By-Law No. 353, and the several Statutes relating to the said Toronto Street Railway Company except so far as the same are modified by this agreement.

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and of the permission hereby given to occupy the streets in said amended report mentioned with their street railway tracks and to use the same for the purposes of parties of the second part, they, the said parties to the second part hereby for themselves and their successors covenant, promise and agree to and with the parties of the first part and their successors to build, construct and operate the several lines and extensions of lines of street railway mentioned in said Report No. 22 of the Committee on Works, so amended and adopted by said Council as aforesaid, and which are hereinafter more particularly set out, upon, and subject to the conditions and terms of said By-Law No. 353 of the Council of the said parties of the first part, and the several Statutes of Canada and the Province of Ontario relating to the said Toronto Street Railway Company, the parties of the second part, and also subject to the following conditions, namely:—

The said lines and extensions of lines shall be built in the following order, Church street, Strachan avenue and Exhibition road, Dundas street from Queen to Dufferin street, Queen street from Yonge street eastward to King street, Spadina avenue from College street to Bloor street, and Bathurst street from King street to Bloor street.

All the above lines, except the last two named, are to be built and operated during the year 1891, (subject, however, as regards Exhibition Road to the parties of the first part procuring and granting to the said parties of the second part, a proper, safe, and fit means of crossing the railway tracks across which the said street railway track is to be carried).

The said Spadina avenue route during the year 1892, and the said line on Bathurst street as follows: That portion lying south of College street during the year 1892, and that portion thereof lying north of College street within one year from the completion of the sewer thereon from College street to Bloor street.

And the parties of the second part also agree, for themselves and their successors, to and with the parties of the first part and their successors, that should the taking up and relaying of the track upon the Church street route above mentioned or upon that portion of the Queen street route above mentioned, lying eastward of Parliament street be rendered necessary, either by the re-construction of the present Church street sewer or by the construction of a sewer upon the said portion of Queen street, they, the said parties of the second part will take up and re-lay the same at their own cost, charges and expenses. This provision is not however to apply to any future case of re-building, altering or repairing said sewer or sewers other than the cases above expressly provided for, nor to be considered a waiver of the original rights of the said parties of the second part except in the cases above expressly provided for.

And it is expressly agreed and understood by and between the parties hereto that nothing herein contained shall operate to prejudice, interfere with, derogate from, or in any wise modify (except as herein expressly provided,) the rights and liabilities of the parties hereto under the agreement, by-law and statutes heretofore in force regulating the relations of the parties hereto, and that the lines of railway tracks to be laid by the parties of the second part under this agreement shall, when built, be considered as coming, to all intents and for all purposes, within the operation of the said agreement, by-law and statutes, except as herein otherwise expressly provided.

In witness whereof, the parties hereto have hereunto set their corporate seals, and the hands of the proper officers the day and year first above written.

Signed, sealed and executed in the presence of	(Signed)	FRANK SMITH, <i>President.</i> [L.S.]
(Signed) JOHN SMITH,	}	JAMES GUNN, <i>Secretary.</i>
<i>Witness.</i>		W. BARCLAY McMURRICH, <i>Mayor.</i> [L.S.]
		SAMUEL B. HARMAN, <i>Treasurer.</i>

CLXVI.

TORONTO, 20th April, 1893.

To the Chairman of the Committee on Works, Toronto.

DEAR SIR,—I desire on behalf of the Company to make to your Committee, through you, two suggestions with regard to the contemplated laying of block pavements upon Queen and King streets. These suggestions are not made only in the interests of this Company, but very largely in that of the City and the public.

You are aware that considerable difficulty has arisen with respect to the Yonge street pavement. For some reason—whether the negligence of the contractor or the natural difficulty caused by the severe frosts, does not now seem to be material—the position of the pavement between the stringers on which our track is laid, has not proved a very satisfactory piece of work.

Your contractors would of course repudiate any suggestion of negligence—and for the present purpose we will assume that they would be correct in doing so. In that case the lesson to be learned from your experience with the Yonge street pavement is an obvious one. In this climate and upon streets where our tracks are laid, the block pavement cannot be successfully laid in the confined spaces between the stringers, though in the larger space outside the stringers, the greater room for natural expansion very considerably lessens the difficulty. And this brings me to my first suggestion, which is, that the scheme for the new block pavement should provide the substitution for wooden blocks in the space between the stringers of some material which will not be subject to expansion by moisture or frost. We are satisfied unless this be done, or unless better work is done by the contractors, there will be a constant recurrence of the difficulties to which allusion has been made in the case of the Yonge street pavement.

I would suggest that the block should only be laid upon the sides of the streets, between the kirbing and the outside stringers of our track (we of course paying for the construction of the eighteen inches next the stringers) and that between our tracks we be compelled by such an agreement as your solicitor and ours may approve, to constantly maintain a thoroughly good roadway of cobble or macadam, which may be made subject to a rigid system of inspection by your engineer both as to quality and as to grade.

If your Committee will carefully consider this proposition, I feel satisfied that it will be found to stand every test of utility and ultimate economy that may be applied to it.

We shall be glad to have an opportunity of discussing the matter with your Committee: and trust you will give it your consideration. This method would also to a very great extent do away with the inconvenience which the public must suffer from not being able to make use of the cars during the progress of the work; and this brings me to the other suggestion, which is, that in any case the conduct of the work may be so arranged as to afford the least hindrance to the running of the cars. I think your Committee will agree with me when I say, that it would be of the utmost inconvenience to a very large proportion of the public should both of the parallel lines, King and Queen streets, be closed simultaneously, or indeed should either street be broken up at the same time along its whole length.

In all probability by an interview between your Committee and ourselves, a plan could be devised by which rapid construction might be made consistent with the slightest possible interruption of the railway traffic.

Apologizing for the length of this communication, and trusting your Committee may deem it worth while to pay some consideration to the suggestions I have ventured to make

I am,

Your obedient servant,

J. GUNN,

Secretary Toronto Street Railway Company.

CXLVII.

The Act of the Legislature of Ontario passed March 25th, 1889,
52 Vic. cap. 78, provides by section 18 as follows:

18. The Corporation of the City of Toronto may, with the consent of the rate-payers, borrow from any bank or other corporation or person who may be willing to lend the same, whatever sum may be required to enable the said corporation to acquire the ownership of the railways of the Toronto Street Railway Company and of all real and personal property in connection with the working thereof, at the expiration of the current term of the franchise of the said Company, under the agreement in that behalf between the said City and the said Company*, and may, if necessary, issue debentures therefor, and may manage and operate the said railways, or (having acquired the said property), may sell, lease or otherwise dispose of the same to any one or more persons, firms or corporations, on such terms and for such periods as may be agreed upon between the City and said persons, firms or corporations.

*See the eighteenth resolution recited in By-law 353, printed *ante* at page 12.